

THE BIHAR AND ORISSA CODE,

VOLUME II.

BENGAL ACTS, 1862 TO 1890.

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THE BIHAR AND ORISSA CODE

In Four Volumes :

CONTAINING

**The Regulations, Ordinance and Local
Acts in force in the Presidency of
Fort William in Bengal ;**

WITH

**Tables and Lists, Notes as to Scheduled Districts and
De-Regulationised Tracts, and Notifications declaring
Enactments in force in, or extending Enactments,
to such Districts and Tracts,
and a Full Index.**

FIRST EDITION

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VOLUME II :

Bengal Acts, 1862 to 1890.



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Chronological Table of Enactments Printed in this Volume.

[With respect to the entry of repealing enactments in column 4 of this Table, the following has been the ordinary practice :—

- (1) where an enactment has been totally repealed more than once, the latest repealing enactment has alone been entered ;
- (2) where an enactment has been partially repealed and afterwards totally repealed, the total repeal only has been entered : a repeal of the unrepealed portions of an enactment is treated as a total repeal ;
- (3) partial repeals covered by later partial repeals have not been entered ;
- (4) local repeals covered by later local repeals have not been entered ;
- (5) where an enactment has been locally repealed and afterwards repealed by an enactment whose operation is unrestricted, the later repealing enactment has alone been entered.]

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[¹] The expression “ Ben. Act,” or “ Bengal Act ” as used in this Code, means an Act made by the Lieutenant-Governor of Bengal in Council or the Governor of Fort William in Bengal in Council, as the case may be—cf. the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 3, cl. (6), in Vol. III of this Code.

[²] Ben. Act 2 of 1906 has been repealed by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 6, Sch. IV.

[³] E. B. and A. Act 1 of 1907 has been extended to Western Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 4, Sch. II.]

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[¹] Ben. Act 2 of 1916 has been repealed by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 6, Sch. IV.

[²] E. B. and A. Act 1 of 1907 has been extended to Western Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 4, Sch. II.

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[¹] Ben. Act 2 of 1909 has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

[²] E. B. and A. Act 1 of 1911 has been repealed by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 6, Sch. IV.

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[¹] Ben. Act 2 of 1911 has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

[²] Ben. Act 5 of 1908 has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

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^[1] Section 2 of Ben. Act 2 of 1910 has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

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[¹] Ben. Act 5 of 1908 has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

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THE BIHAR AND ORISSA CODE.

VOLUME II.

BENGAL ACTS OF 1862 TO 1890, IN FORCE IN THE PROVINCE
OF BIHAR AND ORISSA.

BENGAL ACT 3 OF 1862.

[THE BENGAL LAND-REVENUE SALES (AMENDMENT) ACT, 1862.] [¹]

(23rd April, 1862.)

An Act to amend Act II of 1859^[2] (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency).^[3]

Whereas it is expedient to extend the period allowed for the registry Preamble.
of * *^[4] tenures * *^[5] and to alter the scale of fees on certain applications for the opening of separate accounts for shares of entire

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—*see* Vol. I of this Code.

LOCAL EXTENT.—Since this Act is (*see* s. 4, *post*, p. 2) to be taken and read as part of the Bengal Land-revenue Sales Act, 1859 (II of 1859), it has the same local extent as that Act—*see* Vol. I of this Code.

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the following Scheduled Districts, namely :—

The Districts of Hazaribagh, Ranchi, Palamau and Manbhum and the pargana Dhalbhum and the Kolhan, in the District of Singhbhum, in the Chota Nagpur Division—*see* Vol. IV, Part IV.

The Act is in force in the Sonthal Pargana—*see* Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) in Vol. I of this Code.

The whole of this Act has been repealed for the Division of Orissa—*see* the Orissa Tenancy Act, 1913 (B. & O. Act II, 1913, sec. I, Sch. 1, Part III, in Vol. III of this Code).

[²] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[³] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[⁴] The word “under,” which was repealed by the Repealing and Amending Act, 1903 (1 of 1903), is omitted.

[⁵] The words “and farms,” which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

(Secs. 1-4. Schedule.)

estates, for deposit of money or Government securities, and for registry of under-tenures and farms; It is enacted as follows:—

1. *Repeal of ss. 45 and 59 of the Bengal Land-revenue Sales Act, 1859 (11 of 1859). Rep. by the Repealing Act, 1873 (12 of 1873).*

2. * * * * *

Limitation.

Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the deed constituting the tenure.

Fees to be paid at rates mentioned in Schedule.

3. The Collector on the part of the Government shall be entitled to demand from applicants under * * *^[2] sections 15 and 16, sections 40, 43 and 44, of Act 11 of 1859,^[3] fees not exceeding the rates specified in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

Act to be read as part of Act 11 of 1859.

4. This Act shall be taken and read as part of the said Act 11 of 1859.^[3]

SCHEDULE OF FEES.

1. (*Filing an application under section 10 or section 11 of Act 11 of 1859 for opening a separate account for a share of an entire estate.*)—*Rep. by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (4).*

2. For filing an application—

for a deposit of money or Government securities under section 15 of the said Act—half *per cent.* of the amount deposited;

for any interest on Government securities so deposited, drawn by the Collector—half *per cent.* of the amount drawn.

For filing an application for withdrawal of a deposit under section 16 of the said Act—half *per cent.* of the amount withdrawn.

[¹] The first two paragraphs of s. 2, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted. They ran as follows:—

“Applications under ss. 40, 43 and 44 of Act 11 of 1859, for registry of tenures and farms created before the passing of Act 11 of 1859, must be made within three years of the passing of this Act.

Application for the registry of tenures existing at the time of the passing of this Act, but created after the passing of Act 11 of 1859, must be made within three months of the passing of this Act.”

[²] The words and figures “ss. 10 and 11,” were repealed, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (4).

[³] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Schedule.)

3. For filing an application, under section 40, 43 or 44 of the said Act, for the registration of an under-tenure or farm—

if the annual rent of the under-tenure or farm do not exceed 1,000 rupees—at the rate of five *per cent.* on the rent:

if the annual rent of the under-tenure or farm exceed 1,000 rupees—at the above rate up to 1,000 rupees, and at one *per cent.* on all above that amount.

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BENGAL ACT 7 OF 1862.

(THE BENGAL LAND-REVENUE RESUMPTION ACT, 1862.)^[1]

(7th May, 1862.)

An Act to repeal section 30 of Regulation 2, 1819^[2] (for modifying the provisions contained in the existing Regulations regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made).

Whereas by section 30 of Regulation 2, 1819,^[2] it is enacted that Preamble.
certain suits preferred in a Court of Judicature regarding lands held, or claimed to be held, free of assessment, shall be referred for investigation to the Collector, and that similar suits may be preferred in the first instance to the Collector; and whereas such reference of suits is unnecessary and causes inconvenience and delay in their decision, and it is advisable that such suits should be preferred and disposed of exclusively in the ordinary Courts of Civil Judicature; It is enacted as follows:—

1. [*Repeal of s. 30 of the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (2 of 1819)*]. *Rep. by the Repealing Act, 1873 (12 of 1873).*

2. All suits preferred by proprietors, farmers or *talukdars* to resume the revenue of any land held free of assessment, as well as all suits preferred by individuals claiming to hold land exempt from the payment of revenue, shall be instituted, heard and determined in and by the Courts of Civil Judicature, like ordinary civil suits, and under the rules and subject to all the provisions contained in Act 8 of 1859 (for
Suits for resumption of land held free of assessment and claims to hold land exempt from revenue to be tried in Civil Courts.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LOCAL EXTENT.—Since this Act contains no “local extent” clause, it must be taken to extend to the whole of the former Province of Bengal. The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Ranchi, Palamau and Manbhum, and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III.

It is also in force in the Sonthal Pargana,—see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

^[2] The Bengal Land-Revenue Assessment (Resumed Lands) Regulation, 1819. It is printed in Vol. I of this Code.

(Secs. 3-4.)

simplifying the procedure of the Courts of Civil Judicature not established by Royal Charter), [¹] and not otherwise.

3, 4. *[Application of Act to pending suits; saving of proceedings had under s. 30 of the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (2 of 1819) before passing of Act]. Rep. by the Repealing Act, 1874 (16 of 1874).*

¹ Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877. The present Code of Civil Procedure is Act 5 of 1908, and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

BENGAL ACT 4 OF 1864.

(THE BENGAL DISTRICTS ACT, 1864.)^[1]

(20th April, 1864.)

An Act to amend Act 21 of 1836.^[2]

Whereas it is expedient to amend Act 21 of 1836^[2]; It is enacted Preamble.
as follows:—

It shall be lawful for the Lieutenant-Governor of Bengal from time to time to alter ^[3] the limits of existing *zilas* in any part of the provinces subject to the control of the said Lieutenant-Governor.

Lieutenant-Governor may alter limits of existing *zilas*.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LOCAL EXTENT.—This Act applies to the whole of the former Province of Bengal—see the enacting clause. The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III.

It is also in force in the Sonthal Pargana,—see Vol. IV, Part IV; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

^[2] The Bengal Districts Act, 1836. It is printed in Vol. I of this Code.

Act 10 of 1836 gives power to create new districts. Power to alter the limits of districts is given by the present Act, and power to alter the limit of Collectorships is given by the Bengal Land-revenue (Assistant Collectors) Regulation, 1821 (4 of 1821), s. 8 (7), in Vol. I of this Code. Power to transfer districts from one Division to another is given by the Bengal Revenue Commissioners Regulation, 1829 (1 of 1829), s. 2, in Vol. I of this Code.

^[3] For a list of orders made under this Act see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

BENGAL ACT 5 OF 1864

(THE CANALS ACT, 1864.)

CONTENTS.

PREAMBLE.

SECTION.

1. Interpretation.
 2. What navigable channels may be rendered subject to provisions of Act.
 3. By whom navigable channels may be made.
Mode of obtaining land for the purpose.
 4. Bar of suit against Government.
 5. Tolls to be paid on lines of navigation subject to Act.
Proviso.
 6. Lieutenant-Governor may fix and alter rates of tolls.
 7. Publication of rates of toll at every toll-house.
 8. Lieutenant-Governor to appoint persons to collect tolls, who may farm collection.
 9. Payment of tolls how enforced.
 10. Penalty for evasion of toll.
 11. Rules relating to lines of navigation.
 12. Publication of such rules.
 13. Appointment of supervisor with power to remove obstruction.
 14. Mode of exercising such power.
 15. Supervisor may forbid construction of bandels, etc.
 16. Penalty for causing obstruction to line of navigation.
 17. (*Repealed.*)
 18. Offences by whom punishable.
 19. (*Repealed.*)
 20. Short title.
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SCHEDULE. (*Repealed.*)

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BENGAL ACT 5 OF 1864.

(THE CANALS ACT, 1864.)^[1]

(8th June, 1864.)

An Act to amend and consolidate the law relating to the collection of tolls on canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the Provinces under the control of the Lieutenant-Governor of Bengal.^[2]

Whereas it is expedient to amend and consolidate the law relating Preamble.
to the collection of tolls on * * *^[3] canals and lines of navigation
* * *^[4] and to authorize the collection of tolls on such other lines
of navigation as may hereafter be rendered subject to the provisions of

[¹] LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal (*see* the title), and applies to navigable channels notified under s. 2 or authorized under s. 3.

For a list of channels to which the Act has been so applied, *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, *see* Vol. IV, Part III, but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (III of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

OTHER ENACTMENTS.—As to canals, *see also* the following enactments:—

the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code;

the Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), *post*, p. 53;

the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), *post*, p. 155;

the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876), *post*, p. 201; and

the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), *post*, p. 439.

As to the transfer of Bihar and Orissa Canals by the East India Irrigation and Canal Company, *see* the East India Irrigation and Canal Act, 1869 (32 & 33 Vict., c. 7), printed in the Collection of Statutes relating to India, Vol. I, page 444.

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any embankment, land or watercourse which is under the operation of the present Act—*see* s. 91 of the Act of 1882, *post*, p. 457.

COLLECTION OF CANAL TOLLS BY MUNICIPAL COMMISSIONERS.—For power to appoint the Municipal Commissioners to collect tolls, under section 8 of the present Act, on navigable channels passing through a Municipality, *see* the Bengal Municipal Act, 1884, s. 171, *post*, p. 562.

As to the crediting of profits to the Municipal Funds, and as to the exercise by the Commissioners of the powers vested by the present Act in the Collector, *see ibid.* As to the cancellation of orders made under the said s. 171, *see ibid.*, s. 172, p. 562.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[³] The word “the” in the preamble, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

[⁴] The words “specified in the Regulations and Acts in the Schedule to this Act annexed,” which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

(Secs. 1-3.)

this Act, and to provide for the construction and improvement of lines of navigation; It is enacted as follows:—

Interpreta-
tion.

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say:—

Vessel.

the word “vessel” shall include any ship, barge, boat, raft, timber, bamboos or floating materials, propelled in any manner:

Line of
navigation.

the words “line of navigation” shall mean any navigable channel subject to the provisions of this Act:

Channel.

the word “channel” shall include any river, canal, *khal*, *nala* or waterway, whether natural or artificial:

Person.

the word “person” shall include any company, association or body of persons, whether incorporated or not.

(Number and gender.) *Rep. by the Amending Act, 1903 (1 of 1903). See now the Bengal General Clauses Act, 1899, s. 14 in Vol. III of this Code.*

What
navigable
channels may
be rendered
subject to
provisions of
Act.

2. It shall be lawful for the Lieutenant-Governor of Bengal,^[1] from time to time, by notification^[2] to that effect published in the Calcutta Gazette, to declare that the provisions of this Act shall apply to any navigable channel specified in such notification;

and from and after such publication the provisions of this Act shall apply to and be in force as regards such navigable channel * * *^[3]

By whom
navigable
channels may
be made.

3. It shall be lawful for the Lieutenant-Governor of Bengal^[1] from time to time to authorize^[4] any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any watercourse, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section.

Mode of
obtaining
land for the
purpose.

The Government of Bengal^[1] may take possession, as for a public purpose, of any land that may be necessary for the execution of any of the above-mentioned works, under the provisions of * * *^[5]

^[1] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[2] For a list of notifications issued under s. 2, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

^[3] The rest of s. 2, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

^[4] For an order made under s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

^[5] The words and figures “Act 6 of 1857 (for the acquisition of land for public purposes) or of,” in s. 3, which were repealed by the Repealing and Amending Act, 1903 (1 of 1903), are omitted.

(Secs. 4-8.)

any * *^[1] Act * *^[2] in force for the taking possession of land for public purposes.^[3]

4. No action or suit shall be brought against the Secretary of State for India in Council, or the Government, in respect of any injury or damage caused by, or resulting from, any act done under the last preceding section. Bar of suit against Government.

5. Tolls, at such rates as shall be fixed in manner hereinafter mentioned, shall be paid in respect of all vessels entering upon, or passing along, any of the lines of navigation subject to the provisions of this Act: Tolls to be paid on lines of navigation subject to Act.

Provided that such tolls shall be payable only so long as such line of navigation shall be open. Proviso.

6. The Lieutenant-Governor of Bengal ^[4] may fix, and from time to time alter, the rates at which such tolls^[5] shall be levied: Lieutenant-Governor may fix and alter rates of tolls.

Provided that no toll shall be levied, and no alteration of any rate of toll shall have effect, until notice shall have been published in the Calcutta Gazette, for such period as the said Lieutenant-Governor may fix, of the intention to levy or alter such tolls, and of the rate or place at which such toll is to be levied.

7. Notification of the rates of toll and of the places of collection shall be at all times exhibited to public view at every toll-house where toll is levied under this Act, in the English, Urdu and Bengali languages. Publication of rates of toll at every toll-house.

8. The Lieutenant-Governor of Bengal^[4] shall appoint^[6] such persons ^[7] as he may think fit to collect tolls under this Act, and it shall be lawful for any person, so appointed to farm^[8] the collection of tolls Lieutenant-Governor to appoint persons to collect tolls, who may farm collection.

^[1] The word "other," in s. 3, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

^[2] The words "that may now or hereafter be," in s. 3, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[3] See now the Land Acquisition Act, 1894 (1 of 1894), printed in the General Acts, 1887-97, Ed. 1909, p. 363.

^[4] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[5] For a list of orders made under s. 6, fixing rates of tolls, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

For an order prescribing license-fees in lieu of tolls, see *ibid.*

For an order exempting certain vessels from toll or demurrage, see *ibid.*

^[6] For a list of appointments made under s. 8, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

^[7] As to the collection of tolls by Municipal Commissioners, see footnote on p. 11, ante.

^[8] As to the recovery of sums due from a farmer or his surety, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (d), Sch. I, in Vol. III of this Code.

(Secs. 9-11.)

to any other person, with the sanction of the Government of Bengal^[1] or to employ any other person in such collection.

The person to whom the collection of tolls may be farmed out, or who may be employed in the collection of them, shall have power to collect and be authorized to receive them, in the like manner as any person appointed as aforesaid.

Payment of
tolls how
enforced.

[²]9. If any toll due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel, and any furniture thereof, and to detain the same;

and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector^[3] or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by Government in that behalf;

and on receipt of this report the Collector,^[3] Deputy Collector or other officer as aforesaid shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and if the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector,^[3] Deputy Collector or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be necessary to pay the toll and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Penalty for
evasion of
toll.

10. Any person who shall refuse or evade, or attempt to evade, any toll due under this Act shall be punished, on conviction before a Magistrate, with a fine which may extend to fifty rupees, or with simple imprisonment in lieu of fine which may extend to one month.

Rules relat-
ing to lines of
navigation.

11. It shall be lawful for the Lieutenant-Governor of Bengal^[1] from time to time to make rules^[4] not repugnant to any law in force, and to repeal, alter and amend the same, for the management of any line of navigation subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act; and the Lieut-

[¹] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[²] As to the application of s. 9 to the recovery of the expense of removing obstructions, see s. 14, last para., *post*, p. 16.

[³] As to the exercise of powers of Collector by Municipal Commissioners, see footnote on s. 1, *ante*, p. 11.

[⁴] For a list of rules made under ss. 11 and 12, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 12-13.)

enant-Governor^[1] may affix fines as penalties for the infringement of such rules not exceeding fifty rupees for any one infringement, or five rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters:—

- for determining the tonnage of vessels and their measurement;
- for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast;
- for determining the length of time during which vessels may remain stationary on any line of navigation and the amount of demurrage to be paid by vessels remaining stationary beyond such time;
- for regulating the mode in which and the places at which tolls are to be levied under this Act;
- for the removal of sunken vessels and obstructions; and for the storing and disposal of the cargo of vessels seized under this Act.

12. Rules shall not be passed until the same shall have been published in the Calcutta Gazette for a period of six weeks, and after that time the rules^[2] shall be published as passed, with such alterations (if any) as to the Lieutenant-Governor of Bengal^[1] shall seem fit. Publication of such rules.

The rules so published as passed shall not have effect until the expiration of two weeks after such last publication; and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act.

Copies of all rules, in the English, Urdu and Bengali languages, shall be exhibited to public view at every place where toll is collected.

13. It shall be lawful for the Government of Bengal^[1] to appoint^[2] any person to be the supervisor of any line of navigation subject to the provisions of this Act; and such person shall be empowered to cut down and remove any tree which may have fallen or may be likely to fall into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary. Appointment of supervisor with power to remove obstruction.

[1] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[2] For a list of rules, made under ss. 11 and 12, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[3] For a list of orders made under s. 13, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 14-18.)

Mode of
exercising
such power.

14. Wherever such supervisor shall consider that the cutting down and removal of any tree or the removal of any other obstruction is necessary he may in cases of emergency at once remove the same, and may for that purpose enter on any private property.

In cases not of an emergent nature, he shall serve a notice in writing on the owner or occupier of such private property, directing him to remove the same within a reasonable time.

If the owner or occupier cannot be found, notice may be served by notification to be affixed in some conspicuous place in the nearest village.

If the owner or occupier shall not remove the obstruction within the time given in the notice, the supervisor may proceed to remove it himself and may for that purpose enter on any private property.

Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in section 9 of this Act.

Supervisor
may forbid
construction
of bandels,
etc.

15. Whenever in the opinion of such supervisor the construction of any bandel or other contrivance for fishing, or for any other purpose, in any line of navigation is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such bandel or other contrivance, or (if such owner or other person cannot be found) to be affixed at some conspicuous place in the nearest village, forbid the construction of such bandel or other contrivance.

Penalty for
causing ob-
struction to
line of navi-
gation.

16. Any person who shall wilfully cause or shall aid in causing any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished on conviction before a Magistrate with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupees, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage.

17. (*Recovery of fines.*) *Rep. by the Amending Act, 1903 (1 of 1903.)*

Offences by
whom punish-
able.

18. If any person shall be guilty of an offence against the provisions of this Act on any line of navigation subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such line of navigation, or adjoining either side of that part of the line of navigation in which such offence shall be committed;

(Secs. 19-20.)

and, such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner, and to the same extent, as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits;

and, in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

19. (*Indemnity for certain acts done heretofore in the collection of Short title. tolls, etc.*). Rep. by the Repealing Act, 1873 (12 of 1873).

20. This Act may be cited as the Canals Act, 1864.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Rep. by the Amending Act, 1903 (1 of 1903).

BENGAL ACT 7 OF 1864.

(THE SALT ACT, 1864.)

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2. (*Repealed.*)
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5. Penalty for such manufacture.
6. Confiscation of salt and materials.
7. Board of Revenue to grant licenses on certain conditions.
8. Proprietor and others to give notice to Police of unlicensed salt-works on their lands.
9. (*Repealed.*)
10. Licensed manufacturer to provide proper warehouse.
11. Lieutenant-Governor may prescribe rules and impose penalties.
Proviso.
12. Regulation of possession and transport of salt.
13. *Rawanas* by whom and how granted.
14. *Rawana* not to be granted without payment of duty.
15. Limitation of possession or transport of salt.
Proviso.
16. Penalties for possessing or transporting salt without *rawana*.
17. Punishment for transporting salt in excess of quantity specified in *rawana*.
18. Confiscation of salt conveyed otherwise than as allowed.
19. Salt transported beyond limits not to be again brought within them without a special *rawana*.
20. Salt sold or lost within limits to be certified on back of *rawana*.
21. Penalty for omitting to certify sale or loss.
22. If whole quantity be sold within limits or whole or part carried beyond, *rawana* to be delivered up.
23. Inspection of salt-works by police-officers.
24. Arrest of persons carrying salt liable to confiscation.
25. Salt seized may be weighed by police-officer.
26. Persons arrested to be forthwith taken before Magistrate and detained or admitted to bail.
27. Magistrate may issue search-warrant on application.
28. Rules regarding entry of house by force.
29. Magistrate may summon persons and adjudge confiscations.
30. Rules of Criminal Procedure Code applied.
31. Seizures within Calcutta to be determined on by Justice of the Peace.
32. On confiscation, salt to vest in Her Majesty.
33. Penalty for vexatious seizures and arrests.
34. Punishment on second and subsequent convictions.
- 35, 36. (*Repealed.*)
37. Limitation as to charge.
38. Bar of *certiorari* as to Justices' proceedings.
Quashing judgments.
39. Board of Revenue may mitigate penalties.
40. Disposal of proceeds of seizure and fines.
41. Limitation of suits, etc.
42. (*Repealed.*)

SCHEDULE. (*Repealed.*)

APPENDIX. Note showing the extent to which the Indian Salt Act, 1882, is in force in Bengal.

BENGAL ACT 7 OF 1864.

(THE SALT ACT, 1864.)^[1]

(15th June, 1864.)

An Act to amend and consolidate the laws relating to the manufacture, possession, transport and sale of salt in the Provinces under the control of the Lieutenant-Governor of Bengal.^[2]

Whereas it is expedient to amend and consolidate the laws relating Preamble, to the manufacture, possession, transport and sale of salt in the Provinces under the control of the Lieutenant-Governor of Bengal;^[2] It is enacted as follows:—

1. This Act may be cited as the Salt Act, 1864.

2. (*Enactments repealed*). *Rep. by the Repealing Act, 1873 (12 of 1873)* Short title, 1873).

3. The following words shall have the several meanings hereby Interpretation assigned to them, unless where a contrary intention shall appear from the context (that is to say):—

the word “salt” shall include every saline substance and preparation used or intended to be used with food;

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1864, p. 202.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—*see* the title and preamble.

This Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, *see* Vol. IV, Part III of this Code.

It is in force in the Sonthal Pargana, *see* Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

COMMENCEMENT.—The Act came into operation on the 1st July, 1865—*see* Notification, dated the 16th May, 1865 (in Calcutta Gazette of 24th idem, p. 945), issued under s. 42 of the Act.

SUPERSESSION.—The Act is to a great extent superseded by the Indian Salt Act, 1882 (12 of 1882), in the several areas (*see* Appendix, *post*, p. 30) in which the latter Act is in force.

CUSTOMS DUTY.—As to customs duty on imports of salt by sea, and imports by land from foreign territory, *see* the Indian Tariff Act, 1894 (8 of 1894), ss. 3, 5, and Sch. III, in General Acts, 1887-97, Ed. 1909, pp. 384, 385, 391.

As to customs duty on salt imported coastwise, *see* the Sea Customs Act, 1878 (8 of 1878), s. 20 (b), in General Acts, 1868-78, Ed. 1909, p. 625, and the Indian Tariff Act, 1894, ss. 2 (4), 7, in *ibid*, 1887-97, Ed. 1909, pp. 384, 385.

No drawback is allowed on re-exportation of salt—*see* the Sea Customs Act, 1878, s. 50 (d), *ibid*, 1868-78, Ed. 1909, p. 633.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 4-5.)

"Manufacture."	the word "manufacture" shall include the preparation or collection of salt;
"Salt-work."	the words "salt-work" shall mean any place used or intended to be used for the manufacture of salt;
"Board of Revenue."	the words "Board of Revenue" shall mean the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal;
* * * * *	
"Police-officer."	the words "police-officer" shall include all village-police-officers; [1]
"Seer."	the word "seer" shall mean a weight of eighty tolas;
"Maund."	the word "maund" shall mean a weight of forty seers;
Salt in possession of servant or agent.	when salt is in the possession of a person's servant or agent on his account, it is in that person's possession within the meaning of this Act;
Causing or procuring act to be done, punishable in same manner as doing act.	where the doing of any act is made punishable by this Act, or by any of the rules[2] to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner;
"Rawana."	the word "rawana" shall mean a written or printed permission duly issued under the provisions of this Act, to possess or transport salt;

* * * * *

Unlicensed manufacture of salt prohibited.

Penalty for such manufacture.

4. Within the provinces under the control of the Lieutenant-Governor of Bengal[4] it shall not be lawful for any person who is not duly licensed in the manner hereinafter provided to manufacture salt.

5. Whoever, without a license duly obtained under this Act, shall manufacture, or attempt to manufacture, salt shall be punished with fine, which may extend to five hundred rupees, or with simple imprisonment for a term which may extend to six months, or with both.

[1] The definition of "Magistrate," which was repealed by the Amending Act, 1903 (1 of 1903), is omitted. The Bengal Salt Act, 1873 (Ben. Act 1 of 1873), s. 1, *post*, p. 147, declares that all powers which may, under the present Act, be exercised by a Magistrate, may be exercised by a Magistrate of the first or second class; and s. 2 of the Act of 1873 declares that all offences punishable under the present Act may be inquired into and tried by a Magistrate of the first or second class.

[2] For power to make rules and to prescribe penalties for breach thereof, *see* s. 11, *post*, p. 23.

[3] The clauses as to number and gender, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted. *See* now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

[4] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 6-11.)

The use of each salt-work in such unlicensed manufacture shall be a separate offence within the meaning of this section; and each fire or fire-place, or place for collecting salt in any mode, used or intended to be used in such manufacture, shall be deemed a separate salt-work.

The continuing, after conviction and sentence, of the offence mentioned in the introductory part of this section, shall be considered as amounting to the commission of such offence and shall be punishable in the same way as such offence.

6. All materials and implements used or intended to be used in manufacturing salt without a license, and all salt so manufactured, shall be confiscated.

Confiscation of salt and materials.

7. The Board of Revenue shall grant licenses to manufacture salt in such places in the said provinces and to such persons as they shall think fit:

Board of Revenue to grant licenses on certain conditions.

Provided that no person shall obtain a license to manufacture salt unless he shall have complied with such terms and conditions for securing the payment of the duty hereinafter mentioned as may be required by the said Board.

8. Every proprietor, tenant, under-tenant and cultivator who owns or holds land on which there shall be any salt-work not licensed under the provisions of this Act,

Proprietor and others to give notice to police of unlicensed salt-works on their lands.

and every *naib*, *gumashta*, *tahsildar* or other agent employed by the Government or the Court of Wards or by any private proprietor on such land,

shall, within ten days after the existence of any such salt-work shall have come to his knowledge, give written notice of the same to a police-officer.

If any person bound to give notice under this section shall wilfully omit or delay to give the same, he shall for every such offence be liable to a fine not exceeding five hundred rupees for each salt-work.

9. (*Rate of duty on manufacture of salt*). *Rep. by the Indian Salt Act, 1882 (12 of 1882).*

10. Every licensed manufacturer of salt shall, before he begins to manufacture, provide a proper and secure warehouse, to be approved by the Board of Revenue, for the purpose of depositing and securing therein the salt to be manufactured; and all salt manufactured by him shall in the first instance be deposited in such warehouse.

Licensed manufacturer to provide proper warehouse.

11. The Lieutenant-Governor of Bengal [¹] shall from time to time prescribe rules, which shall be notified in the Calcutta Gazette, for

Lieutenant-Governor may prescribe rules

[¹] Now the Lieutenant-Governor in Council of Bihar and Orissa.

(Secs. 12-16.)

and impose penalties. regulating the manufacture, deposit and transport of salt, and for securing the payment of the duty thereon; and shall from time to time fix penalties for infringements of such rules:

Proviso. Provided that no rule shall be repugnant to any of the provisions of this Act, or to any law in force, and that no penalty shall exceed five hundred rupees.

Regulation of possession and transport of salt. **12.** Within such limits as the Lieutenant-Governor of Bengal [¹] shall define, by notification in the Calcutta Gazette, the possession and transport of all salt shall be regulated in manner hereinafter provided.

Rawanas by whom and how granted. **13.** The Board of Revenue shall grant *rawanas* for all salt possessed or transported within the limits so fixed, in accordance with such rules as the Government shall from time to time make in this behalf, and on payment of such fee as may be fixed in such rules.

Rawana not to be granted without payment of duty. **14.** No *rawana* shall be granted unless the full amount of duty on the quantity of salt, to be specified in such *rawana*, shall have been paid.

Limitation of possession or transport of salt. **15.** It shall not be lawful to possess or transport more salt than five *seers*, unless the same shall be specified in a *rawana* granted under section 13 of this Act:

Proviso. Provided that this section shall not apply to salt imported by sea and warehoused under Act 6 of 1863 (*the Consolidated Customs Act*), [²] or to salt deposited by a manufacturer in an approved warehouse under section 10 of this Act.

Penalties for possessing or transporting salt without *rawana*. **16.** Any salt, exceeding five *seers* in quantity, which may be found within such limits as aforesaid, not specified in a *rawana*, shall be held to be contraband, and as such shall be seized and confiscated.

The vessels, packages and covering in which such salt shall be found, and any animals or conveyances used in carrying it, shall also be seized and confiscated.

Any person possessing or transporting, or attempting to transport, such salt shall be liable to a fine not exceeding five rupees for every *maund* of salt so seized and confiscated.

All persons found in gangs or companies transporting, or attempting to transport, such salt, when the whole quantity exceeds ten *seers*, shall be liable to the like penalty, and each one of the offenders shall be liable to the whole fine.

[¹] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[²] Act 6 of 1863 has been repealed and re-enacted by the Sea Customs Act, 1878 (8 of 1878), and this reference should now be read as if made to the latter Act—see s. 2 thereof, in General Acts, 1868-78, Ed. 1909, p. 384.

(Secs. 17-21.)

In the cases aforesaid the fine shall be at the rate of five rupees per *maund*, according to the quantity of salt seized, whether more or less than one *maund*.^[1]

17. If any person shall possess, transport or attempt to transport, within the said limits, under a *rawana* a greater quantity of salt than is specified in such *rawana*, the excess, as well as the quantity so specified, shall, if such excess be found on weighment to exceed two-and-a-half *per centum* on the quantity so specified, be held to be contraband, and as such shall be seized and confiscated.

Punishment for transporting salt in excess of quantity specified in *rawana*.

Any person possessing or transporting, or attempting to transport, such salt shall be liable to a fine of five rupees for every *maund* of salt in excess of the quantity so specified.^[1]

18. Salt being conveyed by a route or to a place other than that specified in such *rawana* shall be seized and confiscated.

Confiscation of salt conveyed otherwise than as allowed.

Any person possessing or transporting, or attempting to transport, such salt shall be liable to the penalty prescribed in section 16 of this Act.

19. Salt which may have been transported beyond the said limits shall not again be brought within those limits except under a special *rawana* granted for the purpose under the authority of the Board of Revenue.

Salt transported beyond limits not to be again brought within them without a special *rawana*.

Any salt brought within such limits without such special *rawana* shall be seized and confiscated; and the persons in whose possession it may be found shall be liable to the penalty prescribed in section 16 of this Act, for the possession of contraband salt.

It shall be competent to the said Board to withhold or grant such *rawana*.

20. All persons possessed of salt specified in a *rawana*, who may sell, lose or otherwise dispose of any portion of such salt within the said limits, shall certify on the back of such *rawana* the quantity sold, lost or disposed of by them.

Salt sold or lost within limits to be certified on back of *rawana*.

21. Whoever within the said limits sells, loses or disposes of salt, and wilfully or negligently omits to certify such sale, loss or disposal thereof in the manner above described, shall be liable to a fine not exceeding five rupees for every *maund* so sold, lost or disposed of by him; and any salt in his possession not exceeding twice the quantity sold, lost or disposed of, may be seized by an officer in charge of the police-station as security for the payment of such fine.

Penalty for omitting to certify sale or loss.

[1] As to weighment of salt under s. 16 or s. 17, see s. 25, *post*, p. 33.

(Secs. 22-27.)

If whole quantity be sold within limits or whole or part carried beyond, *rawana* to be delivered up.

22. If all the salt specified in a *rawana* be disposed of within the said limits, such *rawana* shall be delivered up to the officer in charge of the police-station within which the last parcel of the salt shall have been disposed of.

If any part of the salt specified in such *rawana* be carried beyond the said limits, such *rawana* shall in that case be delivered up to the officer in charge of the last police-station which such salt may have to pass before being carried beyond the said limits.

Inspection of salt-works by police-officers.

23. Any police-officer may enter and inspect, at any time by day or night, any salt-work, or any warehouse or premises in which salt is stored.

Arrest of persons carrying salt liable to confiscation.

24. Any police-officer may arrest any person carrying or in possession of contraband salt, and may seize the vessels, packages and covering, and any animals or conveyances used in carrying such salt.

Salt seized may be weighed by police-officer.

25. For the purposes of the preceding section and of sections 16 and 17 of the Act, it shall be lawful for the officer in charge of the police-station within which the salt shall be found to cause the same to be weighed.

Persons arrested to be forthwith taken before Magistrate and detained or admitted to bail.

26. Any person arrested on the ground that he has been guilty of an offence under this Act shall forthwith be taken before a Magistrate or Justice of the Peace, who may, if he see reasonable cause, order such person to be detained in custody until the case shall have been disposed of in the manner hereinafter provided:

Provided that any person so detained shall be liberated on giving recognizance or security to appear at such time and place as shall be appointed for his appearance.

Magistrate may issue search-warrant on application.

27. It shall be lawful for the Magistrate of a district, or division of a district, on application by a police-officer, stating his belief that salt is manufactured in any place within such district or division contrary to the provisions of this Act, or that salt not specified in a *rawana* is kept or concealed in any house, boat or place in such district or division, to issue a warrant to search for such salt.

Such warrant shall be executed in the same way, and shall have the same effect, as a search-warrant issued under the Code of Criminal Procedure.^[1]

[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). The reference in the text should be taken to be made to the Act of 1898—see s. 3 (1) thereof, in General Acts, 1898-03, Ed. 1909, p. 40.

As to search-warrants, see ss. 96 to 99 of Act 5 of 1898, in General Acts, 1898-09, Ed. 1909, pp. 71-73.

(Secs. 28-29.)

It shall be lawful for any Magistrate of the town of Calcutta, on the like application in reference to salt believed to be manufactured in Calcutta contrary to the provisions of this Act, or kept or concealed contrary to the provisions of this Act in any house, boat or place in Calcutta, to issue a warrant, which shall be executed in the same way and shall have the same effect as a search-warrant under Act 13 of 1856 (*for regulating the police of the towns of Calcutta, Madras and Bombay*).^[1]

28. Whenever any officer in charge of a police-station shall have reasonable cause to believe from information (which shall be taken down in writing) that salt is being manufactured in any place contrary to the provisions of this Act, or that salt not specified in a *rawana* is kept or concealed in any house, boat or place,

Rules
regarding
entry of
house by
force.

such officer may, between sunrise and sunset, but always in the presence of another police-officer, enter into any such house, boat or place, and in case of resistance may break open any door and remove any obstacle to such entry;

and may seize and carry away all such salt so found, and all materials and implements used, or intended to be used, in the manufacture,

and may arrest all persons concerned in the manufacture or in the keeping and concealing of such salt:

Provided that, whenever it shall be necessary to enter any house in such manner, the rules for entering a house in execution of a search-warrant, prescribed in Chapter VIII of the Code of Criminal Procedure,^[2] and in the said Act 13 of 1856,^[1] shall be observed by the officer effecting such entry.

25 of 1861.

29. When any salt or other property shall be seized as contraband, any Magistrate within the district or division of a district wherein the same may be seized may, upon the information of any police-officer, summon the person in possession of such salt or other property, or to whom the same may belong, to appear before him; and upon such

Magistrate
may summon
persons and
adjudge
confiscations

[1] Act 13 of 1856, so far as it is applied to the town of Calcutta, was repealed and re-enacted by the Calcutta Police Act, 1866 (Ben. Act 4 of 1866). The Bengal Salt Act, 1873 (Ben. Act 1 of 1873), s. 3 (*post*, p. 148), declares that all references made to Act 13 of 1856 in the Salt Act, 1864, "shall be taken to be made to the Calcutta Police Act, 1866" (Ben. Act 4 of 1866), printed in the Bengal Code, Vol. II, p. 89.

[2] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. It was declared in s. 2 of Act 10 of 1872 that this reference to Chapter VIII of Act 25 of 1861 should be deemed to be made to Chapter XXVII and ss. 415 to 420 (both inclusive) of Act 10 of 1872. Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). Section 3 (1) of the Code of 1898 carries on references to former Codes, and the reference in the text should therefore now be taken to be made to the search-warrant provisions of Act 5 of 1898 (printed in the General Acts, 1898-1903, Ed. 1909, p. 40.)

(Secs. 30-34.)

appearance, or in default thereof may examine into the cause of the seizure thereof, and may adjudge the same to be confiscated.

Rules of
Criminal Pro-
cedure Code
applied.

30. The rules contained in the Code of Criminal Procedure^[1] for 25 of 1861. the trial of cases before a Magistrate and for appeal against orders passed by a Magistrate shall be applicable to adjudications under the last preceding section.

Seizures with-
in Calcutta
to be deter-
mined on by
Justice of
the Peace.

31. When any salt or other property shall be seized under this Act as liable to confiscation within the local limits of the town of Calcutta, such seizures shall, upon information exhibited by any police-officer, be heard and determined in a summary way by a Justice of the Peace for the town of Calcutta;

and such Justice shall cause the person in possession of such salt or other property, or to whom the same may belong, to be summoned to appear before him; and upon such appearance, or in default thereof, shall inquire into the cause of such seizure, and may adjudge the same to be confiscated.

On confisca-
tion, salt to
vest in Her
Majesty.

32. When the confiscation of any salt or other property shall be adjudged under the three last preceding sections, the same shall thereupon belong to, and vest in, Her Majesty, and a warrant shall be issued by the Court to a police-officer directing him to hold the salt or other property confiscated at the disposal of the Board of Revenue.

Penalty for
vexatious
seizures and
arrests.

33. Any police-officer who shall vexatiously and unnecessarily seize the goods or chattels of any person on the pretence of seizing or searching for contraband salt, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred rupees or to simple imprisonment for a term not exceeding six months.

Punishment
on second and
subsequent
convictions.

34. Whenever any person shall be convicted of an offence against this Act, after having been previously convicted of like offence,

he shall be liable, in addition to the penalty attached to such offence, to simple imprisonment for a period not exceeding six months,

and a like punishment of imprisonment not exceeding six months shall be inflicted, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). The reference in the text should be taken to be made to the Act of 1898—see s. 3 (1) thereof, in *General Acts, 1898-03*, Ed. 1909, p. 40.

(Secs. 35-42.)

35, 36. (*Enforcement of penalties.—Period of imprisonment in default of payment of fine*). Rep. by the Amending Act, 1903 (1 of 1903).

37. No charge of an offence under this Act shall be instituted except within six months after the commission of such offence. Limitation as to charge.

38. No writ of *certiorari* shall be issued at the suit of any party out of the High Court of Judicature, to supersede, stay, remove or in any wise affect any information or judicial proceeding before any Justice of the Peace in pursuance of this Act; Bar of *certiorari* as to Justices' proceedings.

and no judgment thereupon shall be quashed, except for error of law apparent on the face of the judgment. Quashing judgments.

39. When any confiscation or penalty shall be adjudged under this Act, the Board of Revenue, within three months after final judgment, may call for the proceedings of the case, and if they shall see cause may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof and direct that the offender be discharged. Board of Revenue may mitigate penalties.

40. All fines paid or levied under * * *^[1] this Act shall be at the disposal of the Board of Revenue, and the said Board may appropriate the same or any portion thereof, and the proceeds of any seizure or any portion of such proceeds, to form a fund for rewarding the police of such grades as may be determined by the said Board, and for rewarding informers, and for compensating persons subjected to annoyance or injury by any proceeding under this Act. Disposal of proceeds of seizure and fines.

41. No suit, action or other proceedings shall be commenced against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended suit, action or other proceeding, and of the cause thereof; nor after the expiration of three months from the accrual of the cause of suit, action or other proceeding. Limitation of suits, etc.

42. (*Power to notify commencement of Act*.) Rep. by the Repealing Act, 1873 (12 of 1873).

SCHEDULE.

(*Enactments repealed*.) Rep. by the Repealing Act, 1873 (12 of 1873).

[¹] The words and figures "section 35 of," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

(Schedule.)

APPENDIX.—NOTE SHOWING THE EXTENT TO WHICH THE INDIAN SALT ACT, 1882, IS IN FORCE IN BENGAL.[¹]

1. Sections 1, 2, 7 and 8 of the Indian Salt Act, 1882 (12 of 1882), [¹] and so much of that Act as refers to offences against any of its provisions or against any rules made under it, extend to the whole of British India (see section 1 of the Act), including Bihar and Orissa.

2. The rest of the Act extends to the Districts of the Patna Division, see section 1, which also empowers the Governor General in Council to extend any portion of the Act (other than the portions specified in paragraph 1 above, which are already in force) to any part of the former province of Bengal. Under this power the following extensions have been made for Bihar and Orissa, namely:—

See
Notification
No. 769-
S. R., dated
the 11th Feb-
ruary 1888
in Calcutta
Gazette,
1888, Pt. IA.,
p. 147
and
Notification
No. 2756-
S. R., dated
the 21st May,
1901, in
Calcutta
Gazette 1901,
Pt. IA, p.
100.

(1) to the Districts of the Orissa Division, the whole Act except—

- (a) the portions specified in paragraph 1 above (which are already in force),
- (b) the words “an Assistant Commissioner of Northern India Salt Revenue, and also includes,” in the second clause of section 3,
- (c) the words “any officer of the Northern India Salt Department, and also includes,” in the third clause of section 3,
- (d) Section 5,
- (e) the words “unless the Commissioner of Northern India Salt Revenue otherwise directs” in section 22,
- (f) the words “or the Commissioner of Northern India Salt Revenue” *vide* 30; and (g) *see* 31;

(2) to the Districts of the Bhagalpore Division, the whole Act, except—

- (a) the portion specified in paragraph 1, above (which was already in force), and
- (b) section 31;

3. Sections 8A and 8B, and the last sentence of section 8F, were introduced into the Act by the Indian Salt Act (1882) Amendment Act,

[¹] This note has been corrected up to the end of 1915.

[²] Printed in General Acts, 1879-86, Ed. 1909, p. 382.

(Schedule.)

1890 (19 of 1890),^[1] and all these clauses as well as section 5 relate only to Northern India. Section 31 related only to the Madras Presidency, and was repealed by the Act of 1890 just mentioned.

It will thus be seen that the whole of the Act 1882, so far as it is applicable to Bengal, is now in force in the several areas mentioned in clauses (1) and (2) of paragraph 2, *ante*.

[¹] Printed in General Acts, 1887-97, Ed. 1909, p. 294.

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BENGAL ACT 4 OF 1865.

(THE BENGAL PREVENTION OF INOCULATION ACT, 1865.)^[1]

(12th April, 1865.)

An Act for the prohibition of the practice of inoculation in the town and suburbs of Calcutta and in towns to which Act 3 of 1864,^[2] passed by the Lieutenant-Governor of Bengal in Council, has been or shall hereinafter be extended.

Whereas it is found that small-pox is spread by inoculators who infect persons living in towns without adopting any precaution against contagion;

And whereas proper and sufficient arrangements have been made in the town of Calcutta and in its suburbs, and in certain other towns in the province of Bengal,^[3] for the vaccination or inoculation with the cow-pox of the inhabitants thereof respectively; and it is desirable to prohibit by law the practice of inoculation with the small-pox in such towns and places;

It is enacted as follows:—

1. Any person who shall hereafter produce, or attempt to produce, in any person, by inoculation with variolous matter, or by wilful exposure to variolous matter, or to any matter, article or thing impregnated with variolous matter, or who shall wilfully, by any other means whatsoever,

Penalty for inoculating or otherwise producing small-pox.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1865, p. 280.

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and to Howrah, and may (see s. 3, *post*, p. 40) be extended to—

- (a) any other municipality,
- (b) any cantonment, or
- (c) any place in which there are proper and sufficient arrangements for inoculation with cow-pox.

The Act is in force in the following de-regulation tracts, namely:—

the Angul Sub-division,—see Vol. IV, Part VI; and

the Sonthal Parganas,—see *ibid.*;

but its application is barred in the Khondmals Sub-division of the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

FURTHER ENACTMENT.—For a further enactment relating to small-pox, see the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), *post*, p. 315.

^[2] Ben. Act 3 of 1864 was repealed by Ben. Act 5 of 1876, which again has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884). This reference to Ben. Act 3 of 1864 must now be taken to be made to the Bengal Municipal Act, 1884—see s. 2 of the latter Act, *post*, p. 501.

^[3] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 2-4.)

produce the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.

Penalty for entering place, subject to Act, without certificate, before forty days from date of inoculation.

2. If any person, having been inoculated with the small-pox in a place to which the provisions of this Act shall not at the time be applicable shall afterwards enter the town of Calcutta, or any other town or place to which such provisions shall then be applicable, before the lapse of forty days from the date of such inoculation, or without a certificate from a qualified medical officer^[1] stating that such person is no longer likely to cause contagion, such person shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.

Act where to take effect.

3. This Act shall take effect in the town of Calcutta and in the station of Howrah and suburbs of Calcutta, as the same are defined in the Schedule appended to Act 21 of 1857^[2] (*to make better provision for the order and good government of the suburbs of Calcutta and of the station of Howrah*), from the date of the passing of this Act;

and it shall be lawful for the Lieutenant-Governor of Bengal,^[3] at any time after such date, by notification^[4] published in the Calcutta Gazette, to extend this Act to any town or place to which Act 3 of 1864,^[5] passed by the Lieutenant-Governor of Bengal in Council (*the District Municipal Improvement Act*) shall then apply, or in which there shall then be any Military Cantonment, or in which it shall appear to the Lieutenant-Governor of Bengal^[3] that at the time of such notification there exist proper and sufficient arrangements for the inoculation of the inhabitants thereof with the cow-pox.

Mode of procedure.

4. The provisions of the Code of Criminal Procedure^[6] relative to 25 of 1861 the meaning thereby assigned to the word "Magistrate," and to cases

[¹] As to the meaning of the expression "qualified medical officer" see the Bengal Medical Act, 1914 (Ben. Act 6 of 1914), s. 30, in Vol. III of the Bengal Code.

[²] The Howrah Offences Act, 1857, printed in the Bengal Code.

[³] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁴] For a list of notifications, issued under s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[⁵] Bengal Act 3 of 1864 was repealed by Act 5 of 1876, which again has been repealed and re-enacted by the Bengal Municipal Act, 1884, (Ben. Act 3 of 1884). This reference to Bengal Act 3 of 1864 must now be taken to be made to the Bengal Municipal Act, 1884—see s. 2 of the latter Act, *post*, p. 501.

[⁶] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and the references in the text should now be read as referring to the latter Act—see s. 3 (1) thereof, in General Acts, 1898-03, Ed. 1909, p. 40.

triable under Chapter XV of the said Code^[1] * * *^[2] shall apply to the case of any offence committed against this Act * * *^[3]

Whenever the convicting Magistrate shall sentence the offender to fine, it shall be lawful for such Magistrate to award any portion, not exceeding one-half, of such fine to the person on whose information such offender has been convicted.

^[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and the references in the text should now be read as referring to the latter Act—see s. 3 (2) thereof, in General Acts, 1898-03, Ed. 1909, p. 40.

^[2] The words “and to the recovery of fines” were repealed by the Amending Act, 1903 (1 of 1903), and are omitted.

^[3] The portion, applying Calcutta Police Acts, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

BENGAL ACT 7 OF 1865.

(THE BENGAL MUNICIPAL (SLAUGHTER-HOUSES AND MEAT-MARKETS)
ACT, 1865.)^[1]

(26th April, 1865.)

An Act to make provision for the better regulation and supervision of Public Slaughter-Houses * * *,^[2] and for the adoption of proper Conservancy arrangements connected therewith.

Whereas it is necessary to make provision for the better regulation and supervision of public slaughter-houses and markets for the sale of meat and fish * * *,^[2] and for the adoption of proper conservancy arrangements connected therewith; It is enacted as follows:—

1. No place within ^[3][any limits to which this section has heretofore been, or may hereafter be, extended by notification under section 9] shall be used as a slaughter-house, unless a license in writing for the use thereof as a slaughter-house has been obtained from the Municipal Commissioners, who are hereby empowered, at their discretion, from time to time, to grant such license;

No place to be used as a slaughter-house without a license.

and whoever, without such license, uses as a slaughter-house any place within the limits aforesaid, shall be liable to a penalty not exceeding two hundred rupees, and to a penalty not exceeding fifty rupees, for every day, after the conviction for such offence, during which the said offence is continued :

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1865, p. 554.

LOCAL EXTENT.—This Act applies only to towns and places to which it is extended by notification under s. 9—see s. 1.

The application of the Act is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 in Vol. I of this Code.

GENERAL LAW.—For the general law as to Municipalities in Bengal, see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), *post*, p. 501, and the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), printed in Vol. III of the Bengal Code, 1913-15.

^[2] The words “in the Suburbs of Calcutta,” in the title and preamble, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[3] These words in square brackets in s. 1 were substituted for the words and figures “the jurisdiction of the Municipal Commissioners of the Suburbs of the town of Calcutta appointed under the provisions of Act 3 of 1864, passed by the Lieutenant-Governor of Bengal in Council (*the District Municipal Improvement Act*)” by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

(Secs. 2-5.)

Provided that nothing in this Act shall apply to any Hindu or Muhammadan place of worship.

Municipal Commissioners may provide places for slaughter-houses, and may make by-laws for the management and regulation thereof.

2. The Municipal Commissioners may, from time to time, if they shall think fit, with the sanction of the Government of Bengal^[1] provide places for the purpose of being used as slaughter-houses, and they may make by-laws for, and with respect to, the management, regulation and charges for the use of such places.

Licensed slaughter-houses to be properly drained.

3. Every owner or occupier of any licensed slaughter-house, within the limits aforesaid, shall cause such drains to be made therein as shall be considered sufficient by the Municipal Commissioners, and (if required so to do by the Municipal Commissioners) shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such slaughter-house, or any place used as a meat-market, in a clean and wholesome state;

and if such owner or occupier, after notice in writing given to him by the Municipal Commissioners that such market or slaughter-house is defective in any of the said particulars, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to a penalty not exceeding fifty rupees, for every day during which such default is continued.

Commissioners may make by-laws for the inspection of markets and slaughter-houses.

4. The Municipal Commissioners may, in the manner prescribed and under the conditions laid down in section 84 of (*the said*) Act 3 of 1864,^[2] make by-laws for the inspection of all markets for the sale of meat or fish within the limits aforesaid, and for the management and conduct of the business therein, and for keeping the same in a cleanly and proper state, and for removing filth at least once in every twenty-four hours.

Commissioners may enter and inspect

5. The Municipal Commissioners, or any person appointed by them for that purpose, may at all reasonable times, with or without assistants, enter into and inspect any market, building, shop, stall or place used for

[1] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[2] Ben. Act 3 of 1864 was repealed by the Bengal Municipal Act, 1876 (Ben. Act. 5 of 1876), which again has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884). The reference to s. 84 of Ben. Act 3 of 1864 should now be taken to be made to Part XII of the Bengal Municipal Act, 1884—see s. 2 of the latter Act, *post*, p. 501.

(Secs. 6-9.)

the sale of butcher's meat, poultry or fish, or as a slaughter-house, and may examine any animal, carcass or meat which may be therein;

and, in case any animal, carcass, meat or fish appear to be intended for the food of man and to be unfit for such food, may seize the same;

and if it appear to a Magistrate, upon the evidence of a competent person that such animal, carcass, meat or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food; and the owner thereof, or the person in whose possession the same is found, shall be liable to a penalty not exceeding one hundred rupees.

6. The Magistrate before whom any person is convicted of an offence contrary to the provisions of this Act, relating to slaughter-houses, or of the non-observance of any of the by-laws relating thereto, may in addition to the penalty imposed on such person under the authority of this Act, suspend such license for any period not exceeding two months, and upon conviction for a second or other subsequent like offence, such license may, in addition to the penalty imposed under the authority of this Act, be revoked.

7. Whoever, during the period for which any such license is suspended, or after the same is revoked as aforesaid, slaughters cattle, or allows cattle to be slaughtered in the slaughter-house to which such license relates, shall be liable to a penalty not exceeding one hundred rupees for every day, after the conviction for such offence, during which the said offence is continued.

8. The provisions of [*the said*] Act 3 of 1864^[1] in regard to prosecutions for offences and the enforcement of fines and forfeitures shall be applicable to all prosecutions for offences and the recovery of fines and forfeitures under this Act * * * ^[2]

9. It shall be lawful for the Lieutenant-Governor of Bengal^[3] to extend, by notification^[4] in the Calcutta Gazette, the provisions of this Act, or of any specific portion thereof, to any towns or places in which [*the said*] Act 3 of 1864^[1] may be in force.

[¹] Ben. Act 3 of 1864 was repealed by the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), which again has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884). The reference in the text should now be taken to be made to ss. 352, 353 and 355 of the Bengal Municipal Act, 1884—see s. 2 of that Act, *post*, p. 501.

[²] The words "and the magisterial powers conferred upon the Municipal Commissioners by section 6 of the above Act shall be exercised by them for all the purposes of this Act," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[³] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁴] For a list of notifications issued under section 9, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

slaughter-houses, shops, etc., and may seize unwholesome articles exposed for sale.

Suspension or revocation of license.

Penalty for using slaughter-houses during suspension or revocation of license.

Certain provisions of Bengal Act 3 of 1864 rendered applicable.

The provisions of this Act may be extended to places under Bengal Act 3 of 1864.

BENGAL ACT 8 OF 1865.

(THE BENGAL RENT RECOVERY (UNDER-TENURES) ACT, 1865.)[¹]

(7th June, 1865.)

An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

Whereas doubts have arisen, in consequence of the repeal of section 16 of Regulation 7 of 1832,^[2] as to the authority by whom *patni taluks* and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation 8 of 1819^[3] are to be sold for arrears of rent due to the proprietor on account thereof;

And whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears;

It is enacted as follows:—

1. The word “Collector” as used in this Act, includes all officers exercising the full powers of a Collector of a district. “Collector”
defined.

* * * * *

*[⁴]

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1865, p. 287.

LOCAL EXTENT.—This Act contains no local extent clause, but it would appear from section 3, that it was intended to extend to the same territory as the Bengal Patni Taluks Regulation, 1819 (8 of 1819)—printed in Vol. I of this Code, namely, the whole of the former province of Bengal.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III.

It is in force in the Sonthal Parganas,—see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

The whole of this Act, except s. 3, has been repealed for the division of Orissa, see the Orissa Tenancy Act, 1913 (B. and O. Act 3 of 1913), s. 2, Sch. I, Part III in Vol. III of this Code.

ANNOTATED REPRINT.—This Act is reprinted with notes, in the Bengal Sale Law Manual, 1906, p. 92.

[²] Ben. Reg. 7 of 1832 was finally repealed by the Bengal Civil Courts Act, 1871 (6 of 1871).

[³] The Bengal Patni Taluks Regulation, 1819. It is printed in Vol. I of this Code.

[⁴] The number clause, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

(Secs. 2-7.)

2. (*Laws repealed.*) *Rep. by the Repealing Act, 1873 (12 of 1873).*

Sale by
whom
conducted.

3. The sale for the recovery of arrears of rent of *patni taluks* and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation 8 of 1819^[1] shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act 6 of 1853,^[2] the lands lie; and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid which, by Regulations 8 of 1819^[1] and 1 of 1820^[3] the Judge is required to perform, shall be performed by the said Collector.

Publication
of notice of
sale.

4. Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of section 105 of Act 10 of 1859,^[4] shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector in whose Court the decree is in course of execution shall hereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than 20 days from the hanging up of the said notice in the Court in which the decree is in course of execution.

Contents of
notice of sale.

5. The said notice shall specify, in the words issued in the plaint in the suit in which the decree was made, the name of the village, estate and *pargana*, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

How sale
may be
stopped.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation 8 of 1819,^[1] for the recovery of sums paid by other than the defaulting-holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

Sale to
highest
bidder.

7. The under-tenure shall be sold to the highest bidder in open Court.

^[1] The Bengal Patni Taluks Regulation, 1819. It is printed in Vol. I of this Code.

^[2] The Rent Recovery Act, 1853. It is printed in Vol. I of this Code.

^[3] The Bengal Patni Taluks Regulation, 1820. It is printed in Vol. I of this Code.

^[4] The Bengal Rent Act, 1859. It is printed in Vol. I of this Code.

(Secs. 8-13.)

8. The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, Deposit by purchaser. twenty-five *per cent.* of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office-day.

9. The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office-day after the eighth day: and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold. Deposit forfeited if balance of purchase-money not paid up.

If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales shall also be applicable to all re-sales under this Act which may be rendered necessary by the default of any purchaser. Provisions as to sales to apply to re-sales.

11. When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser a certificate in the form prescribed in the Schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or *amin* to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein. Certificate and possession to be given to purchaser on payment in full.

12. From the proceeds of the sale of the under-tenure the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure. Proceeds of sale how dealt with.

13. An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector under this Act, if made within thirty days from the date of the sale: but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury Appeal.

(Secs. 14-17.)

to the interests of one of the parties to the suit in which the decree was passed.

Power of
revision.

14. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner in any case in which an appeal has been heard by a Collector, and the Board of Revenue in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

Recovery by
purchaser of
purchaser-
money if
sale set aside.

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

Purchaser to
acquire the
under-tenure
with certain
exceptions,
free of in-
cumbrances.

16. The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created or by the subsequent written authority of the person who created it, his representatives or assignees:

Provided that nothing herein contained shall be held to entitle the purchaser to eject *khudkast raiyats* or resident and hereditary cultivators, nor to cancel *bonâ fide* engagements made with such class of *raiya*t or cultivators aforesaid by the late incumbent of the under-tenure or his representatives except it be proved, in a regular suit, to be brought by such purchaser for the adjustment of his rent that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

Zamindar
how to
proceed if
purchaser
do not
register.

17. The purchaser of an under-tenure sold under this Act shall apply to the *zamindar* or other landholder, within fifteen days from the day of sale, to have his name registered in the *zamindar* or other landholder's books as the purchaser; and shall execute a *kabuliyat* on the same terms and conditions on which the under-tenure was held by the defaulter; and, if such application be not made within fifteen days, it shall be lawful for the *zamindar* or other landholder to sue the said pur-

(Sec. 18.)

chaser under the provisions of clause 1 of section 23 of Act 10 of 1859.[¹]

18. (*Indemnity*). *Rep. by the Repealing Act, 1873 (12 of 1873).*

SCHEDULE.

(*Referred to in section 11.*)

I certify that *A. B.* has purchased, under Act 8 of 1865, the under-tenure (*as specified in the notice of sale*), and that his purchase took effect on the day of (*being the day after that fixed for the last day of payment*).

(Signed) *C. D.*

Collector.

[¹] The Bengal Rent Act, 1859. It is printed in Vol. I of this Code.

BENGAL ACT 3 OF 1866.

[THE BENGAL LEGISLATIVE COUNCIL (WITNESSES) ACT, 1866.][¹]

(28th March, 1866.)

An Act to provide for the attendance and examination of witnesses before the Council of the [Governor of Fort William in Bengal][²] for making Laws and Regulations.

Whereas it is expedient to make provision for the attendance of ^{Preamble.} witnesses before the Council of the Lieutenant-Governor of Bengal[²] for making Laws and Regulations and for the examination of such witnesses; It is enacted as follows:—

1. It shall be lawful for the Lieutenant-Governor of Bengal[²] by a ^{Power to} summons under the hand of the Secretary[³] or Assistant Secretary[⁴] to ^{summon} ^{persons to} the Government of Bengal in the Legislative Department for the time ^{appear.} being,

to require the attendance before the Council of the Lieutenant-Governor of Bengal[²] for making Laws and Regulations, at a time and place to be mentioned in such summons, of any person, residing within any of the provinces or places subject to the Government of the Lieutenant-Governor of Bengal[²] whose evidence shall, in the judgment of such Council, be material with reference to any project of Law, Bill or Act then under consideration by such Council,

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

[²] **LEGISLATIVE PAPERS.**—For Statement of Objects and Reasons, see Calcutta Gazette, 1866, p. 252.

[³] **LOCAL EXTENT.**—This Act was passed for the whole of the former Province of Bengal—see s. 1.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and the Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III.

It is in force in the Sonthal Parganas, see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

[⁴] Now the Lieutenant-Governor in Council of Bihar and Orissa,—see the Bengal. Bihar and Orissa and Assam Laws Act, 1912 (Act 7 of 1912), s. 3, Sch. D, items 8 and 9 in Vol. I of this Code.

[⁵] The official title of this officer is now “Secretary to the Government of Bengal in the Legislative Department and Secretary to the Bengal Legislative Council.”

[⁶] The official title of this officer is now “Assistant Secretary to the Government of Bengal in the Legislative Department and Assistant Secretary to the Bengal Legislative Council.”

(Secs. 2-3.)

and by such summons to require the person so summoned to produce before such Council all such books, deeds and writings as to the said Council shall appear necessary for obtaining information as to the matter so under consideration;

and every person so summoned shall, according to the exigency of the summons, attend before the said Council, and produce such books, deeds and writings as shall be in his power, custody or control.

Administra-
tion of an
oath or
affirmation.

2. It shall be lawful for the said Secretary^[1] or Assistant Secretary^[2] to the Government of Bengal in the Legislative Department for the time being, or any other officer appointed in that behalf by the Lieutenant-Governor of Bengal^[3] to administer an oath or affirmation,^[4] in such form as to the said Council shall seem fit, to any person appearing in obedience to such summons as aforesaid.

But nothing herein contained shall prevent such person from giving evidence without oath or affirmation, if the said Council shall think it expedient that the evidence should be so given.

Powers
against
persons
failing to
appear, etc.

3. If any person, upon whom any such summons shall be served by the delivery thereof to him, or leaving thereof at his usual or last known place of abode,

shall, without reasonable cause (to be allowed by the said Lieutenant-Governor of Bengal),^[3] fail to appear before the said Council at the time and place mentioned in the summons, or

shall refuse to make oath or affirmation as required, or

shall not make answer to such questions as shall be put to him touching the matter under consideration as aforesaid, or

shall refuse or fail, without reasonable cause (to be allowed by the said Lieutenant-Governor of Bengal),^[3] to produce to the said Council any book, deed or writing in his possession, power or control as by the said Council he shall be required to produce (whether mentioned in the summons or not),

the Lieutenant-Governor of Bengal),^[1] shall, on the report of the said Council that such failure or refusal has taken place, have the power, by warrant under his hand, to direct that such person be apprehended and committed to close custody in a place and for a time speci-

[1] The official title of this officer is now "Secretary to the Government of Bengal in the Legislative Department and Secretary to the Bengal Legislative Council."

[2] The official title of this officer is now "Assistant Secretary to the Government of Bengal in the Legislative Department and Assistant Secretary to the Bengal Legislative Council."

[3] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[4] As to oaths and affirmations, see the Indian Oaths Act, 1783 (10 of 1873), in General Acts, 1868-78, Ed. 1909, p. 385.

(Secs. 4-6.)

fied in the warrant, unless he shall in the meantime comply, to the satisfaction of the said Council, with such requisitions as have been made on him touching his examination.

The warrant may be directed to any officer appointed in that behalf by the Lieutenant-Governor of Bengal.^[1]

4. Whenever a summons is issued for the attendance of a witness under this Act, the Lieutenant-Governor of Bengal^[1] may, if he thinks fit, order such witness to receive from the Collector or Commissioner of the district or division in which the witness resides such expenses as he would have been entitled to receive if summoned as a witness before the principal Court of original jurisdiction within the limits of which he shall be residing. Expenses of witnesses.

5. The provisions of sections 21 and 32 of Act 2 of 1855^[2] (*for the further improvement of the Law of Evidence*) shall extend to witnesses examined before the said Council of the Lieutenant-Governor of Bengal.^[1] Provisions of sections 21 and 32 of Act 2 of 1855 extended.

6. Throughout this Act, unless the contrary appears from the context,— Interpretation.

* * * * *

the word “Council” shall include any committee of the whole “Council.” Council, and any Select Committee of the Council of the Lieutenant-Governor of Bengal^[1] for making Laws and Regulations.

^[1] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[2] These sections are as follow :—

“21. A witness whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own possession.

“32. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly, or indirectly, to criminate, such witness, or that it will expose, or tend, directly, or indirectly, to expose, such witness to a penalty or forfeiture of any kind :

Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding.”

Act 2 of 1855 has been repealed by the Indian Evidence Act, 1872 (1 of 1872,—printed in General Acts, 1868-78, Ed. 1909, p. 200), which does not expressly save references to the first-mentioned Act; but this reference to the Act of 1855 appears to be unaffected by the repeal—see Craies on Statute Law, 1911, pages 322, 323.

^[3] Words as to number and gender, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

BENGAL ACT 7 OF 1866.

(THE BENGAL EMBANKMENT ACT, 1866.)

CONTENTS.

PREAMBLE.

SECTION.

1. Lands for embankments may be acquired under powers for acquiring land for public purposes.
2. Charging cost of land acquired, where lands of different owners benefited.
3. Mode of inquiry as to proportion chargeable to each estate.
4. Power to make award stating names of owners of lands benefited and proportion of cost payable.
No appeal from award, but one owner may recover from another not assessed or under-assessed.
5. Expense included in cost of acquiring land.
6. Expenses of sluice apportioned where lands of different owners benefited.
7. Disposal of lands no longer required for embankments.
8. Collector may delegate powers to Deputy Collector.
9. Act does not apply where obligation to provide land exists.
10. Interpretation.

• .

BENGAL ACT 7 OF 1866.

(THE BENGAL EMBANKMENT ACT, 1866.)^[1]

(9th May, 1866.)

An Act to make better provision for the acquisition of land for embankments, and other matters relating thereto.

Whereas it is expedient to make better provision for the acquisition of land required for embankments, and for charging the expense thereof upon the owners of lands benefited thereby; Be it enacted:—

Preamble.

1. When it shall be necessary for any Collector to acquire land for the purpose of constructing any public embankment, or of extending or altering any embankment, the superintendence or charge whereof is vested in an officer of Government, the provisions of Act 6 of 1857,^[2] passed by the Governor General of India in Council, entitled “an Act for the acquisition of land for public purposes,” or of any other Act for the time being in force relating to the acquisition of land for public purposes, shall extend and apply to the acquisition of such land for the purpose aforesaid, so far as the same shall be applicable;

Lands for embankments may be acquired under powers for acquiring land for public purposes.

and such Collector shall and may take and acquire such land, and assess compensation for the same, and do all other acts necessary for the acquisition thereof, by and under the powers and provisions of such Act or Acts so far as the same is or are applicable in that behalf; but no such declarations or orders by or on behalf of Government as are mentioned in sections 2 and 3 of the said Act 6 of 1857,^[2] shall be necessary or required.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1866, p. 203.

LOCAL EXTENT.—Since this Act contains no local extent clause it must be taken to have extended to the whole of the former Province of Bengal. It has, however, been repealed everywhere except in Orissa and the Sundarbans, by the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), parts of which are printed, *post*, p. 155.

The application of the Act is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code: and

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

The only portion of the present Province of Bihar and Orissa in which the Act is in force is the Division of Orissa.

^[2] Act 6 of 1857 was repealed by Act 10 of 1870, which again has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894). This reference should now be construed to be made to the latter Act—see s. 2 (3), thereof, in General Acts, 1887-97, Ed. 1909, p. 363.

(Secs. 2-3.)

Any person to whom compensation has been awarded in respect of lands taken shall be entitled to receive the same together with interest after the rate of six *per centum per annum* from the time when the land was taken :

Provided that, notwithstanding anything contained in section 7, *clause 1*, of Act 32 of 1855^[1] passed by the Governor General of India in Council, entitled "An Act relating to embankments," it shall not be obligatory upon the Collector to pay to any person, nor shall any person have a right to a civil suit for the recovery of, any money in respect of compensation for lands taken, where the same is payable as hereinafter provided by the persons whose lands are benefited, until and unless the Collector shall have received the same from such person.

Charging
cost of land
acquired,
where lands
of different
owners
benefited.

2. In cases where lands, the property of different owners, will in the opinion of the Collector derive benefit from the construction, alteration or extension of any public embankment, and it is necessary to acquire land for the purpose of such construction, alteration or extension, it shall be lawful for such Collector to charge the cost of such land and the expense attending its acquisition upon the persons so deriving such benefit, in such proportions as in his opinion shall be equivalent to the benefit derived by their lands respectively.

Before assessing such contribution the Collector shall cause a notice to be served on each of such persons, in which it shall be stated what land is being taken, and the purpose for which it is required, and that the lands of such person will derive benefit from the execution of the works, and giving him notice that an inquiry will be held, at a day and place to be named, for the purpose of apportioning amongst the persons whose lands will be benefited by the intended works the cost of the land and the expense of acquiring it.

In case such person does not reside within the district in which his lands are situate, the notice may be served upon his agent, or, if he has no agent therein, it will be sufficient to affix the notice upon some conspicuous part of his estate.

Mode of
inquiry as to
proportion
chargeable
to each
estate.

3. On the day fixed in the notice, which shall not be less than one month later than the date of service of such notice, the Collector shall proceed to make the necessary inquiry for the determination of the proportion in which the estates affected by the construction, extension or alteration of the embankment will be benefited thereby.

In making this inquiry he shall receive such evidence as may be tendered by or on behalf of the owners of estates which may appear

[1] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

(Secs. 4-5.)

likely to be benefited by the construction, extension or alteration of the embankment as aforesaid, and by and on behalf of any other persons who may claim to be interested, in the said inquiry, and he may make or cause to be made such local investigation, and call for such documents, and examine such witnesses, as he may think necessary; and all the provisions of the law^[1] for the time being in force in regard to the examination of witnesses and production of documents in judicial proceedings shall be applicable to inquiries conducted by the Collector under this Act.

4. The Collector shall and may after such inquiry make an award, in which he shall find and state the names of the persons whose lands will be or are benefited by the construction, alteration or extension of such embankment, and the proportion of the cost of the land and the expense of its acquisition (including therein the cost of the said inquiry) which they ought, respectively, to bear.

Power to make award stating names of owners of lands benefited and proportion of cost payable.

No appeal shall lie from the award of the Collector.

But it shall be competent to the owner of any land assessed to a larger amount than his fair proportion to recover such excess in the Civil Court from the owner of any land or estate benefited thereby upon whom no assessment has been made or a smaller amount has been assessed than ought to have been awarded against him :

No appeal from award, but one owner may recover from another not assessed or under-assessed.

Provided that in such suit no more shall be recovered from any person than the amount to which he ought to have been assessed where he has not been required to contribute, or the amount by which the sum he was required to pay was less than his fair proportion where he has been required to contribute.

5. There shall be included in the expense of acquiring the land so to be distributed amongst the persons benefited not only the compensation awarded to the owner of the land taken, including interest at the rate of six *per centum per annum* from the time when the land was taken, but also the cost of surveys and plans, of notices, of the said inquiry and award, and all other costs, charges and expenses incident to obtaining possession of such land.

Expense included in cost of acquiring land.

The amount so awarded shall and may be recovered from the person so required to pay the same in the same way and by the same means^[2] as arrears of Government revenue.

^[1] See now Act 5 of 1908 (the Code of Civil Procedure, 1908), Sch. I, Orders XIII, XVI and XVIII, in General Acts, 1904-09, Ed. 1909, pp. 237, 246.

^[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

(Secs. 6-7.)

Expenses
of sluice
apportioned
where lands
of different
owners
benefited.

6. When application has been made to the Collector under section 8 of the said Act 32 of 1855^[1] for the construction of a sluice in any public embankment, and in the opinion of the Collector lands, the property of other persons as well as of the person making the application, will be benefited by the construction of the sluice, the expense of such construction may be assessed upon and recovered from such persons in such shares or proportions as shall, in the opinion of the Collector, be equivalent in the benefit derived by their lands, respectively:

Provided, nevertheless, that notice in writing shall be served on all such persons, stating that it is proposed to make such sluice, the probable expense thereof, and that an inquiry will be held at a place and hour specified, for the purpose of apportioning the expense of such construction among the persons to be benefited thereby, and that such person is supposed to be likely to be benefited thereby.

And such notice may be served, and such inquiry shall be held, and such award shall be made, subject to the same rules, powers and provisos in all respects as is hereinbefore provided in the case of the apportionment of the cost of land required for embankments.

And the said award shall be final: but a civil suit may be brought to recover any excess with which any such person may be charged from persons who ought to have been charged but have not been charged with any portion of the expense or against whom less has been awarded than their fair proportion, as hereinbefore provided with respect to the apportionment of the cost of land.

Disposal of
lands no
longer re-
quired for
embank-
ments.

7. Whenever, in consequence of the construction or alteration of any public embankment, the maintenance of any other public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient by the officer in charge of the embankments, it shall be lawful for the Collector to dispose of the site of the embankment, or of the land so abandoned by public sale; and all the provisions of the^[2] law for the time being in force in regard to sales of land in default of payment of the Government revenue shall be applicable, so far as the same may be reasonably applied, to sales under the provisions of this section.

The proceeds of such sales shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of the new land taken up for embankment purposes, and in such case

^[1] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

^[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

(Secs. 8-10.)

the residue only of the cost of such new land shall be apportioned among the owners of lands benefited as hereinbefore provided :

Provided that it shall not be competent to the Collector to sell in the manner aforesaid any land which shall not have been taken up for embankment-purposes under the provisions of this Act.

8. A Collector may delegate any of his powers under this Act to a Deputy Collector; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector, if presented within fifteen days of the date of the order. Collector may delegate powers to Deputy Collector.

9. Nothing in this Act shall be held to exempt any person from the obligation of giving land gratuitously, or of paying for land taken up for the purpose of public embankments, where such obligation exists by any law or custom. Act does not apply where obligation to provide land exists.

10. The following words and expressions shall have the several meanings hereby assigned to them, unless where a contrary intention appears from the context. Interpretation.

* * * * *

the word "Collector" shall include any officer exercising, by authority of Government, the duties of a Collector of land-revenue, by whatever name his office may be designated: *[1] "Collector."

the word "owner" shall include *zamindars*, holders of *patni* tenures or of any rent-free tenure, dependent *talukdars*, Sundarban grantees and farmers or holders of tenures paying revenue direct to Government. "Owner,"

[1] The provision as to number and gender, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

BENGAL ACT 2 OF 1867.

(THE BENGAL PUBLIC GAMBLING ACT, 1867.)

CONTENTS.

SECTION.

1. Definitions.
2. Power to extend Act.
3. Penalty for owning or keeping, or having charge of, common gaming-house.
4. Penalty for being found in common gaming-house.
5. Power to enter and authorize police to enter and search.
6. Finding cards, etc., in suspected houses to be evidence that they are common gaming-houses.
7. Penalty for giving false name or address.
8. Destruction of instruments of gaming.
9. Proof of playing for stakes unnecessary.
10. (*Repealed.*)
11. Gaming and setting birds and animals to fight in Public streets.
- 11A. Exemption of games of mere skill.
12. Offences by whom triable.
13. Penalty for subsequent offence.
14. Application of fines.
15. Application of definition of "offence" in Indian Penal Code.
16. Certain sections to apply without extension.
17. (*Repealed.*)

BENGAL ACT 2 OF 1867.

(THE BENGAL PUBLIC GAMBLING ACT, 1867.)^[1]

(10th April, 1867.)

An Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal.^[2]

Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal;^[2] It is enacted as follows:—

1. In this Act, “common gaming-house” means any house, tent, room, space or walled enclosure,

in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, tent, room, space or enclosure, whether by the way of charge for the use of the instruments of gaming or of the house, enclosure, room or place, or otherwise howsoever,

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1867, p. 141.

LOCAL EXTENT.—Sections 7 and 11 of this Act apply to the town and suburbs of Calcutta, and s. 13 applies to the whole of the former Province of Bengal (see s. 16, *post*, p. 139). Other sections of the Act apply to places to which they are extended by notification under section 2.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III, of this Code. It is in force in the Sonthal Pargana—see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—For further provisions as to gambling in Bengal, see—

- (1) the Howrah Offences Act, 1857 (21 of 1857), ss. 10 to 15, 59, in the Bengal Code, Vol. I;
- (2) the Indian Penal Code (45 of 1860), s. 294A, in General Acts, 1834-67, Ed. 1909, p. 321;
- (3) the Calcutta Police Act, 1866 (Ben. Act 4 of 1866), ss. 3, 44 to 51, in the Bengal Code, Vol. I.
- (4) the Indian Contract Act, 1872 (9 of 1872), s. 30, in General Acts, 1868-78, Ed. 1909, p. 273; and
- (5) the Fort William Act, 1881, s. 3 and Sch., Art. (16), in the Bengal Code, Vol. I.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 2-3.)

[¹][or in which Rain-Gambling, that is to say, wagering on the occurrence or non-occurrence of rain, is caused on for the profit or gain of any such person as aforesaid.]

[²] [“ Gaming ” shall include Rain-Gambling :

“ instruments of gaming ” shall include books or registers in which Rain-Gambling wagers are entered, all other documents containing evidence of such wagers, and any thing used as a means of Rain-Gambling ;]

* * * * *

* [³]

Power to
extend Act.

2. It shall be competent to the Lieutenant-Governor of Bengal [⁴] whenever he may think fit, to extend, by a notification [⁵] to be published in three successive numbers of the Calcutta Gazette, all or any of the sections of this Act to any city, town (save the town of Calcutta [⁶] as defined by Act 6 of 1863 [⁷] passed by the Lieutenant-Governor of Bengal in Council) or place within the territories subject to his government, and in such notification to define, for the purposes of this Act, the limits of such city, town or place, and from time to time to alter the limits so defined.

Penalty for
owning or
keeping, or
having
charge of
common
gaming-
house.

3. Whoever, being the owner or occupier, or having the use, of any house, tent, room, space or walled enclosure, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house ;

and whoever, being the owner or occupier of any such house, tent, room, space or walled enclosure as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house ;

[¹] These words in square brackets in s. 1, were added by the Bengal Rain-Gambling Act, 1897 (Bengal Act 3 of 1897), s. 4 (2) in Vol. III of this Code.

[²] The definitions of “ Gaming ” and “ instrument of gaming ” were inserted by s. 4 (2), of the same Act. They are to be deemed to be in force on or from the 26th May 1897 in every city, town or place to which Bengal Act 1 of 1867 in any part thereof, was, before that day, extended by notification under its second section—see Bengal Act 3 of 1897 (3), *post*.

[³] The clauses as to gender and number, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

[⁴] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁵] For a list of notifications issued under section 2, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[⁶] *i.e.*, all places within local limits of the ordinary original civil jurisdiction of His Majesty's High Court of Judicature at Fort William in Bengal.

[⁷] Bengal Act 6 of 1863 was repealed by Bengal Act 4 of 1876, which again was repealed by Bengal Act 2 of 1888, and Bengal Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), printed in Vol. III of the Bengal Code, 1913-15.

(Secs. 4-5.)

and whoever has the care or management of, or in any manner assists in conducting, the business of any house, tent, room, space or walled enclosure as aforesaid, opened, occupied, used or kept for the purpose aforesaid;

and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, tent, room, space or walled enclosure,

shall be liable, on conviction before any Magistrate, to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code^[1] for any term not exceeding three months.

4. Whoever is found in any such house, tent, room, space, or walled enclosure, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable, on conviction before any Magistrate, to a fine not exceeding one hundred rupees 'or to' imprisonment of either description, as defined in the Indian Penal Code,^[1] for any term not exceeding one month; and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

Penalty for being found in common gaming-house.

54 of 1860,

5. If the Magistrate of a district^[2] or other officer invested with the full powers of a Magistrate^[3] or the District Superintendent of Police, upon credible information, and after such inquiry as he may think necessary, has reason to believe that any house, tent, room, space or walled enclosure is used as a common gaming-house,

Power to enter and authorize Police to enter and search.

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor shall appoint^[4] in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, tent, room, space or walled enclosure, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not such persons may be then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value,

^[1] See Act 45 of 1860, s. 53, in General Acts, 1834/67, Ed. 1909, p. 248.

^{[2], [3]} Now District Magistrate and Magistrate of the first class respectively—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2), in General Acts, 1898-03, Ed. 1909, p. 40.

^[4] For orders made under section 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 6-9.)

reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorize such officer to search all parts of the house, tent, room, space or walled enclosure which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

Finding
cards, etc.,
in suspected
houses to be
evidence
that they
are common
gaming-
houses.

6. When any cards, dice, gaming-table, cloth, boards or other instruments of gaming are found in any house, tent, room, space or walled enclosure entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, tent, room, space or walled enclosure is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or by any person acting under the authority of either of them.

Penalty for
giving false
name or
address.

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs, or in the first instance if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Destruction
of instru-
ments of
gaming.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money, and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of
playing for

9. It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of

(Secs. 10-13.)

any common gaming-house, to prove that any person found playing therein at any game was playing for any money, wager or stake. stakes unnecessary.

10. Nothing in the foregoing provisions of this Act contained shall be held to apply to billiards, whist or any other game of mere skill wherever played. Act not to apply to certain games.

11. A police-officer may apprehend without warrant any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game, not being a game of mere skill in any public market, fair, street, place or thoroughfare situated within the limits aforesaid, Gaming and setting birds and animals to fight in public streets.

or any person setting any birds or animals to fight in any public market, fair, street, place or thoroughfare situated within the limits aforesaid,

or any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month,

and such police-officer may seize all birds and animals and instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed, and such birds and animals to be sold.

12. Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is committed. Offences by whom triable.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure^[1] as to the amount of fine or imprisonment he may inflict. 5 of 1861.

13. Whoever, having been convicted of an offence punishable under this Act, shall be guilty of any such offence, shall be subject for every such subsequent offence to double the amount of punishment to which he would otherwise have been liable for the same: Penalty for subsequent offence.

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

[1] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to the latter Code—see s. 3 thereof in General Acts, 1898-03, Ed. 1909, p. 40.

(Secs. 14-17.)

Application
of fines.

14. * * * *^[1] All fines * *^[2] imposed under this Act * *^[3] shall (subject to the provisions contained in the last preceding section) be applied as the said Lieutenant-Governor shall from time to time direct.

* * * * *

*^[4]

Application
of definition
of "offence"
in Indian
Penal Code.

15. Anything made punishable by this Act shall be deemed to be an offence of 1860. "offence" within the meaning of the Indian Penal Code.^[5]

Certain
sections to
apply
without
extension.

16. The provisions of sections 7 and 11 of this Act shall * * *^[6] apply to the town of Calcutta, and to the suburbs of the town of Calcutta as the same may be from time to time defined by any notification published by the Lieutenant-Governor in pursuance of Act 2 of 1866^[7] passed by the Lieutenant-Governor of Bengal in Council; and the provisions of section 13 of this Act shall * * *^[6] apply to the whole of the said territories.

17. (*Repeal of sections of Bengal Acts 2 and 4 of 1866.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

^[1] The words and figures "The provisions for the recovery of fines contained in ss. 64, 65, 66 and 67 of the Indian Penal Code and s. 61 of the Code of Criminal Procedure shall apply to," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[2] The words "and penalties," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[3] The words "in any town or place other than the town of Calcutta; and such fines," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[4] The remaining portion of s. 14, relating to fines, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

As to the recovery of fines, see now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 26, in Vol. III of this Code.

^[5] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

^[6] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[7] The Calcutta Suburban Police Act, 1866. It is printed in the Bengal Code (1913-1915), Vol. II, p. 53.

BENGAL ACT 3 OF 1867.

(THE BENGAL PORTS ACT, 1867.)

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BENGAL ACT 3 OF 1867.

(THE BENGAL PORTS ACT, 1867.)^[1]

(10th April, 1867.)

**An Act to amend the Law relating to ships lying in ports
in the Provinces under the control of the Lieutenant-
Governor of Bengal.**^[2]

Whereas it is expedient to amend the law relating to merchant-ships Preamble.
lying in ports in the Provinces under the control of the Lieutenant-
Governor of Bengal;^[2] It is enacted as following:—

1. The following words and expressions for the purposes of this Act Interpreta-
tion.
have the meanings hereby assigned to them, unless where a contrary
intention appears from the context, that is to say:—

the word “master” denotes any person having temporary or perma- “Master.”
nent command or charge of any vessel otherwise than in the capacity
of pilot or harbour-master;

the word “owner” includes any agent acting for and on behalf of “Owner.”
the owner of a ship at the port at which such ship shall lie or be;

the word “port” denotes any port within the Provinces aforesaid “Port.”
subject to the provisions of Act 22 of 1855 (*for the regulation of Ports
and Port-dues*);^[3]

^[1] SHORT TITLE.—This short title was given by the Repealing and Amending Act, 1903 (1 of 1903), Sch. I—*see* Vol. I of this Code. That Act is now known as the Amending Act, 1903—*vide* Act 10 of 1914, Sch. II.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1866, p. 2193.

LOCAL EXTENT.—This Act applies to all ports in the former Province of Bengal which are subject to the provisions of the Indian Ports Act, 1908 (15 of 1908)—*see* the title and preamble, and the definition of “port” in s. 1.

GENERAL LAW.—The general Ports Act is the Indian Ports Act, 1908 (15 of 1908), printed in General Acts, 1904-09, Ed. 1909, p. 519. The present Act is to be construed together with and as part of that Act—*see* s. 19, *post*, p. 72, and foot-note thereto.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] Act 22 of 1855 was repealed and re-enacted by the Indian Ports Act, 1875 (12 of 1875), and the latter Act was repealed and re-enacted by the Indian Ports Act, 1889 (10 of 1889), which again has been repealed and re-enacted by the Indian Ports Act 1908 (15 of 1908). The reference in the text to Act 22 of 1855 should now be construed as a reference to Act 15 of 1908, *see* the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 2-4.)

“Magistrate” the word “Magistrate” includes any officer exercising any of the ²⁵ of 1861. powers of a Magistrate under the Code of Criminal Procedure,^[1] and any Magistrate of Police^[2] for the town of Calcutta;

“Municipal town.” the expression “municipal town” denotes the town of Calcutta and every town, suburb, station, *bazar*, village and tract of country to which the provisions of Act 3 of 1864^[3] (*the District Municipal Improvement Act*), passed by the Lieutenant-Governor of Bengal in Council, have been or shall be extended;

* * * * *

Penalty for not having sufficient crew on vessels lying in port. 2. If any vessel of more than ten tons burden shall, without such license as hereinafter is mentioned, be afloat in any port within the Provinces under the control of the Lieutenant-Governor of Bengal,^[4] without having on board thereof a crew of not less than the number set forth in the first Schedule hereto, the master of such vessel, and in case there shall be no master of such vessel then the owner thereof, shall be punished with a fine not exceeding five hundred rupees.

Power to exempt from maintaining crew on particular ships. 3. Whenever it shall appear to the Conservator of any port that any vessel in such port may, without danger to other vessels in such port, be afloat without such crew as hereinbefore is mentioned being maintained thereon, it shall be lawful to such Conservator, if he shall think fit, to grant under his hand a license in the Form A in the second Schedule hereto, which license may be made determinable on the breach of any conditions therein contained; and during the continuance of such license the provisions of section 2 of this Act shall not apply to such vessel.

Power to revoke exemption. 4. It shall be lawful for such Conservator, by any writing under his hand in the Form B in the second Schedule hereto, to revoke such license; and, from and after the publication of such revocation, by posting a copy thereof upon some conspicuous part of such vessel, the provi-

[1] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. The Act of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). This reference should now be taken to be made to the latter Code—see s. 3, thereof in General Acts, 1898-1903, Ed. 1909, p. 40.

[2] Now Presidency Magistrate—see the Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 3 (2) in General Acts, 1898-1903, Ed. 1909, p. 40.

[3] Bengal Act 3 of 1864 was repealed and re-enacted by Bengal Act 5 of 1876, which again has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884). The reference in the text should now be taken to be made to the Act of 1884—see s. 2 thereof, *post*, p. 501.

[4] The number and gender clause, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 14, in Vol. III of this Code.

[5] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 5-10.)

sions of section 2 of this Act shall apply to such vessel and to the master and owner thereof as if no such license had ever been granted.

5. Whenever it shall appear to the Conservator of any port that any creek, river or dock is so situate that vessels without any crew therein may remain afloat in such creek, river or dock without danger to any vessels in any part of such port, it shall be lawful for such Conservator to make an order in the Form C in the second Schedule hereto, and from time to time, if he shall think fit, to revoke or amend such order:

Power to make order with respect to portions of ports.

Provided always that every such order, amendment and revocation shall be published in the Calcutta Gazette, and that no such order, amendment or revocation shall have any force or effect until it shall have been so published.

6. During such time as any such order shall remain in force the provisions of section 2 of this Act shall not apply to any vessel lying or being within the limits of any such creek, river or dock, as the same shall be defined by such order.

Application of section 2 to certain ships.

7. (*Penalty on master omitting to take order to extinguish fire.*)
Rep. by the Indian Ports Act, 1875 (12 of 1875).

8. It shall be lawful for the Lieutenant-Governor of Bengal^[1] to order (if and when he shall in his discretion think fit) that the entire or any portion of the expense of maintaining the police-force in any port which may be within or abutting upon any municipal town shall be borne by and paid out of the port-fund of such port.

Power to charge port police upon port-fund.

9. It shall be lawful for the Lieutenant-Governor of Bengal^[1] from time to time, to assign to the persons charged with the management of the municipal fund of any municipal town upon which any port may be abutting, or within which any port may be, such annual sums to be charged upon and payable out of the port-fund of such port as to him shall seem just and reasonable for or towards re-imbursing to such municipal fund such portion of the expense of the police-force in such town as may, in the opinion of the said Lieutenant-Governor of Bengal^[1] be rendered necessary by the resort to such town of seamen from ships lying or being in such port.

Power to charge upon port-fund portion of expense of municipal police.

10. In case the port fund of any port shall, after providing for the payment of all sums and charges now by law payable out of such port-fund be insufficient to pay any expense of police and annual sums which shall, under the provisions aforesaid, be payable thereout; it shall be lawful for the said Lieutenant-Governor of Bengal^[1] and he is hereby required, to order that there shall be paid, in addition to all port-dues

Power to impose police-port-dues.

[1] Now the Lieutenant-Governor in Council of Bihar and Orissa.

(Secs. 11-19.)

and charges payable in respect of any ship from time to time lying or being in such port, such port-dues, to be called police-port-dues, as shall thereunto be necessary :

Provided that the same shall not exceed the port-dues in that behalf mentioned in the third Schedule to this Act.

11 to 13. (*Imposition and application of hospital port-dues; [1] power to refuse port clearance till expenses under Merchant Shipping Act, 1854, s. 228, are paid.*) *Rep. by the Indian Ports Act, 1875 (12 of 1875).*

Power to
compound
port-dues.

14. It shall be lawful for the owner of any vessel to pay to the Conservator of any port three times the amount of the police-port-dues and hospital-port-dues^[1] which would, for the time being, be payable in respect of such vessel, and thereby to discharge such vessel from all further police-port-dues and hospital-port-dues in such port for the space of twelve calendar months from the day of the date of such payment.

Power to
vary port-
dues.

15. It shall be lawful for the Lieutenant-Governor of Bengal,^[2] from time to time, to vary the rate of police-port-dues * *^[3] payable in any port, as to him in his discretion shall seem fit, so as that the same shall not exceed the rates in the third Schedule * *^[4] set forth.

Imposition
or increase
of port-
dues to be
published.

16. No order of the Lieutenant-Governor of Bengal,^[2] imposing or increasing any port-dues under this Act, shall take effect until the expiration of six calendar months from the day upon which such order shall have been published in the Calcutta Gazette.

Recovery of
penalties.

17. All complaints as to offences against this Act shall be heard and determined by a Magistrate within whose local jurisdiction the offence may be alleged to have been committed * * *^[5]

Penalties how
disposed of.

18. All penalties levied under this Act shall be applied as fines re-ceived under the said Act 22 of 1855^[6] are directed to be applied.

Construc-
tion.

19. This Act shall be construed together with and as part of the said Act 22 of 1855.^[6]

[1] As to the imposition and application of hospital-port-dues, see now the Indian Ports Act, 1908 (15 of 1908), ss. 49, 50, in General Acts, 1904-09, Ed. 1909, pp. 537, 538.

[2] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[3] The words "and hospital-port-dues," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[4] The word "respectively," which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

[5] The remainder of s. 17 (relating to the recovery of fines), which was repealed by the Repealing and Amending Act, 1903 (1 of 1903), is omitted. See now the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 26, in Vol. III of this Code.

[6] Act 22 of 1855 was repealed and re-enacted by the Indian Ports Act, 1875 (12 of 1875), and the latter Act was repealed and re-enacted by the Indian Ports Act, 1889 (10 of 1889), which again has been repealed and re-enacted by the Indian Ports Act, 1908 (15 of 1908). The reference in the text to Act 22 of 1855 should now be construed as a reference to Act 15 of 1908—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Sec. 20.)

20. (*Commencement of Act.*) *Rep. by the Repealing Act, 1873 (12 of 1873).*

THE FIRST SCHEDULE.

(*Referred to in section 2.*)

	If Natives.	If Europeans.	Officers in charge.
Cargo boats	4	4	0
Vessels, not being cargo-boats, of 600 tons and under, in moorings.	6	4	1
For every additional 100 tons	1½	1	0
Vessels not being cargo-boats of 600 tons and under, in stream.	11	7½	1
For every additional 100 tons	2	1	0

THE SECOND SCHEDULE.

(*Referred to in sections 3, 4 and 5.*)

FORM A.

Port of ()
 I () Conservator of the Port of
 do hereby license the (*ship*) of which
 is master, to remain at her present moorings,
 in the said port, without having on board the crew required by Act 3
 of 1867 of the Lieutenant-Governor of Bengal in Council:

Provided always that, on breach of any of the conditions hereunder
 written, this license shall forthwith absolutely cease and determine.

FORM B.

Port of ()
 I () Conservator of the Port of
 do hereby revoke all license to the (*ship*) to remain in
 port without a crew therein.

(The Third Schedule.)

FORM C.

Port of ()

I () the Conservator of the Port of

do hereby order that vessels lying in the following portion of the said port (*here set out the exempted limits*) shall be exempt from the provisions of the second section of Act 3 of 1867 passed by the Lieutenant-Governor of Bengal in Council.

 THE THIRD SCHEDULE.
*(Referred to in sections 10 * *^[1] and 15.)*

PORT-DUES.

Police-port-dues.

For every vessel entering any port, two annas per ton.

* * * * *

*^[2]

^[1] The figures "11," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[2] The provision as to hospital-port-dues, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted. As to the imposition of hospital-port-dues, *see now the Indian Ports Act, 1908 (15 of 1908), s. 49, in General Acts, 1904-09, Ed. 1909, p. 537.*

BENGAL ACT 3 OF 1868.

(THE BENGAL LAND-REVENUE SETTLEMENT ACT, 1868.)^[1]

(1st July, 1868.)

An Act to amend the law respecting appeals in cases under Regulation 7 of 1822.^[2]

Whereas it is expedient that the period for presenting appeals under section 29 of Regulation 7 of 1822^[2] should be assimilated to the period for bringing appeals in other cases pending before the revenue-authorities; It is enacted as follows:—

1. No petition of appeal presented under the provisions of section 29 of Regulation 7 of 1822^[2] shall be received after the expiration of thirty days from the date of the decision against which such appeal is presented, unless sufficient cause shall be shown for the delay to the satisfaction of the authority to which such appeal is presented.

The days shall be reckoned from and exclusive of the day on which the decree was passed, and also exclusive of such time as may be requisite for obtaining a copy of the order appealed against.

2. (*Commencement of Act.*) *Rep. by the Repealing Act, 1873 (12 of 1873).*

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 956, and for Proceedings in Council, see *ibid*, Supplement, pp. 281, 293, 363 and 371.

LOCAL EXTENT.—The local extent of this Act is the same as that of the Bengal Land-revenue Settlement Regulation, 1822 (7 of 1822), s. 29, printed in Vol. I of this Code.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Part III; but it is barred in—

the District of Angul by the Angul Laws Regulation, 1903 (3 of 1903), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas by the Sonthal Pargana Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 in Vol. I of this Code.

^[2] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol. I of this Code.

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BENGAL ACT 4 OF 1868.

[THE BENGAL ALLUVION (AMENDMENT) ACT, 1868.][¹]

(8th July, 1868.)

An Act to amend the provisions of Act 9 of 1847^[2] (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bihar and Orissa).

Whereas it is expedient to amend the provisions of Act 9 of 1847;^[2]
It is enacted and declared as follows:—

1. (*Repeal of s. 7 of Act 9 of 1847.*) *Rep. by the Repealing Act, Preamble. 1873 (12 of 1873).*

2. It is hereby declared that when any islands shall, under the provisions of clause 3, section 4, of Regulation 11 of 1825^[3] of the Bengal Code, be at the disposal of Government, all lands gained by gradual accession to such island, whether from a recess of the river or of the sea, shall be considered an increment to such island, and shall be equally at the disposal of Government.

Accessions to island considered increment thereto.

3. Whenever it shall appear to the local revenue-authorities that an island has been thrown up in a large and navigable river liable to be taken possession of by Government under clause 3, section 4, of Regulation 11 of 1825^[3] of the Bengal Code, the local revenue-authorities shall take immediate possession of the same for Government, and shall assess and settle the land according to the rules in force in that behalf, reporting their proceedings forthwith for the approval of the Board of Revenue, whose order thereupon, in regard to the assessment, shall be final:

Newly thrown up islands to be assessed.

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 508, and for Proceedings in Council, see *ibid*, Supplement, 1868, pp. 253, 337, 362, 372 and 388.

LOCAL EXTENT.—The local extent of this Act appears to be the same as that of the Act 9 of 1847 which it amends, printed in Vol. I of this Code.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III. It is in force in the Sonthal Pargana, see Vol. V, Part VI, but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 2 (2), in Vol. I of this Code.

[²] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code. The section of Act 9 of 1847 which was specifically “amended” by Bengal Act 4 of 1868 was s. 7, which is replaced by s. 3 of the present Act.

[³] The Bengal Alluvion and Diluvion Regulation, 1825. It is printed in Vol. I of this Code.

(Secs. 4-8.)

Provided, however, that any party aggrieved by the act of the revenue-authorities in taking possession of any island as aforesaid shall be at liberty to contest the same by a regular suit in the Civil Court.

Subsequent
junction to
mainland
not to affect
Government
right.

4. Any island of which possession may have been taken by the local revenue-authorities on behalf of the Government under section 3 of this Act shall not be deemed to have become an accession to the property of any person by reason of such channel becoming fordable after possession of such island shall have been so taken.

Power to
apply for
ways across
islands.

5. Whenever an island, of which possession shall have been taken by Government under section 3 of this Act, shall become attached to the mainland, any person having an estate or interest in any part of the riparian mainland to which such island may become attached while it is in the possession of the Government may apply to the Collector to take measures for the construction of ways, paths and roads on the island: the costs thereof to be equally divided between the applicant and the Government.

Applicant
for ways to
deposit
money, and
ways to be
made.

6. Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient, and, on such deposit being made, the Collector shall proceed to lay out and construct such ways, paths and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached.

Costs of
ways how
borne.

7. In every case the applicant shall be liable to pay and make good to the Government one half of the costs of laying out and constructing such ways, paths and roads as aforesaid, and any moneys due from the applicant under the provisions of this section may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid.

Ways to be
public.

8. Every way, road and path, which shall be laid out or appointed under the provisions aforesaid, shall be deemed a public highway.

BENGAL ACT 7 OF 1868.
(THE BENGAL LAND-REVENUE SALES ACT, 1868.)

CONTENTS.

PREAMBLE.

SECTION.

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3. Time for Revenue-sales extended.
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9. (*Repealed.*)
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11. Power to sell tenures.
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13. Power of enhancement.
14. Saving of right of *raiyat*.
- 15 to 29. (*Repealed.*)
30. Construction.

SCHEDULES A TO E. (*Repealed.*)

BENGAL ACT 7 OF 1868.

(THE BENGAL LAND-REVENUE SALES ACT, 1868.)^[1]

(26th August, 1868.)

An Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue.

Whereas it is expedient to amend and extend the law for the recovery of arrears of land-revenue and of public demands recoverable as arrears of land-revenue; It is declared and enacted as follows:—

1. In this Act, and in Act 11 of 1859^[2] (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), the words in this section mentioned shall have the meanings therein attributed to them, respectively—

the word “proprietor” includes any tenant by whom any estate or tenure is held directly under Government:—

the word “revenue” includes every sum annually payable to Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of *takavi*, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs or watercourses, or other improvements on the land held by them:—

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903) Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 471; and for Proceedings in Council, see *ibid*, Supplement, 1868, pp. 247, 281, 390, 413, 509 and 523.

LOCAL EXTENT.—Since this Act is (see s. 30, *post*, p. 162) to be read with and taken as part of the Bengal Land-Revenue Sales Act, 1859 (11 of 1859), it has the same local extent as that Act, printed in Vol. I of this Code.

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the following Scheduled Districts, namely:—

the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III.

It is in force in the Sonthal Pargana—see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

ANNOTATED REPRINT.—This Act is reprinted, with notes of cases decided by the High Court and of important rulings of the Board of Revenue, in the Sale Law Manual, 1906, p. 58.

THE CERTIFICATE PROCEDURE.—As to the recovery, under the certificate procedure, of arrears of revenue not realised by sale under the present Act, and of money declared to be recoverable under the present Act, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this Code.

[²] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Sec. 2.)

“Estate.” the word “estate” means any land or share in land subject to the payment to Government of an annual sum in respect of which the name of a proprietor is entered on the register known as the general register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act 11 of 1859,^[1] have been opened:

“Tenure.” the word “tenure” includes all interests in land, whether rent-paying or *lakhiraj* (other than estates as above defined), and all fisheries, which, by the terms of the grants creating the same or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument:

“Jurisdiction.” the “jurisdiction” of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

“Collector.” the word “Collector” includes any person vested with the powers of a Collector.

* * * * *

Appeals
against sales.

2. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act or the said Act 11 of 1859,^[1] * *^[3] so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act 11 of 1859,^[1] or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise;

and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act 11 of 1859,^[1] which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation^[4] for his loss, if the sale shall have been occasioned by

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[2] The remainder of s. 1, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted.

^[3] The words “not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided,” which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[4] As to the recovery under the certificate procedure of sums awarded as compensation under this Act, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this Code.

(Secs. 3-6.)

neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office;

and the order of the Commissioner shall in such cases be final.

3. * * * *^[1] The word "thirty" shall be substituted for the word "fifteen" in section 6 of the said Act 11 of 1859^[2] * * *^[3] Time for revenue-sales extended.

4. * * * *^[1] The words "sixtieth" and "sixty" shall be substituted for the words "thirtieth" and "thirty" respectively, Time for confirmation of sales extended. wherever the said words occur in section 27 of the said Act 11 of 1859.^[2]

5. Every notice in and by this Act, or by the said Act 11 of 1859,^[2] directed to be served, shall be served by delivering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last-known place of abode of such person. Mode of serving notices.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

6. It shall be lawful for the Lieutenant-Governor of Bengal,^[4] by an order published in the Calcutta Gazette, to empower all Collectors in any district in such order mentioned, if they shall think fit, to cause such notices as shall be in such order specified to be served upon any proprietors * * *^[5] before proceeding under the provisions of the said Act 11 of 1859^[2] or of this Act, to realize from such proprietors * * *^[6], any arrears of revenue * * *^[7] which be due from such proprietors * * *^[8], Power to cause notices to be served for arrears or demands.

and the costs of serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue

^[1] The words "From the date when this Act comes into operation," in ss. 3 and 4, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[3] The remainder of s. 3 (which repealed the words "or more than thirty" in s. 6 of Act 11 of 1859) was repealed by the Amending Act, 1903 (1 of 1903), and is omitted.

^[4] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[5] The words "or persons liable to any demands," which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[6] The words "or persons" which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[7] The words "or any demands," which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

(Secs. 7-11.)

* * *^[1] which may be due from such proprietors * * *^[2], and shall be recoverable as if the same were a portion of such arrears of revenue. * * *^[3].

and every such order may from time to time be altered, varied or revoked by any other order of the said Lieutenant-Governor^[4] to be from time to time in like manner published.

Notices to
raiyats to be
posted in
sub-divisional
cutcherry.

7. In addition to the notices in and by section 7 of the said Act 11 of 1859^[5] directed to be posted, a similar notice shall be posted at the sub-divisional *cutcherry* within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.

Certificate
to be con-
clusive evi-
dence of
regularity
in service
of notices.

8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act 11 of 1859,^[5] or of section 11 of this Act, shall be conclusive evidence in favour of such purchaser, and of every person claiming under him, that all notices in or by this Act, or by the said Act 11 of 1859,^[5] required to be served or posted, have been duly served and posted;

and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. (*Sales of lākhirāj valid*). Rep. by the Amending Act, 1903 (1 of 1903).

Collectorate
to include
all estates
borne on its
roll.

10. Every estate shall, for the purposes of this Act and of the said Act 11 of 1859, ^[5] be deemed to be within the collectorate of the Collector upon whose general register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the collectorate of any other Collector.

Power to sell
tenures.

^[6]11. Whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day

^[1] The words "or to any demands" which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[2] The words "or persons" which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[3] The words "or of such demands" which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[4] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[5] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[6] This section was substituted for the original s. 11 by the Bengal Land-revenue Sales (Amendment) Act, 1871 (Ben. Act 2 of 1871), *post*, p. 131.

(Sec. 12.)

of payment fixed in the manner prescribed in section 3 of Act 11 of 1859,^[1] the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act 11 of 1859^[1] provided for the sale of estates for the recovery of arrears of revenue;

and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act 11 of 1859,^[1] except that the residue, if any, shall be held in deposit on account of the holder of the tenure and not on account of the proprietor of the estate;

and every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act 11 of 1859^[1] with respect to estates:

Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act 11 of 1859,^[1]

in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and police-*thana* of the division in which the tenure to which the notification relates is situated, or, if the tenure be situated within the jurisdiction of more than one Munsif's Court or police-*thana*, in some one or more of such Courts or *thanas*, and also at the *cutcherry* of the *malguzar* or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

12. The purchaser of any tenure sold under the provisions of section 11 of this Act shall acquire it free from all incumbrances which may have been imposed upon it after its creation, or after the time of settlement, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:—

Effect of sale
of tenure.

First.—*Istimrari* or *mukarrari* tenures which have been held at a fixed rent from the time of the permanent settlement.

[¹] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Secs. 13-30.)

Secondly.—Tenures existing at the time of Permanent Settlement, which have not been held at a fixed rent:

Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.—Tenures created or recognized by the settlement-proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

Fourthly.—Tenures of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made.

Power of
enhance-
ment.

13. Every purchaser of a tenure under section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Saving of
right of
raiyat.

14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser, under section 11 of this Act, to eject any *raiyat* having a right of occupancy at a fixed rent, or at a rent, assessable according to fixed rules under the laws in force, or to enhance the rent of any such *raiyat* otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor irrespectively of all engagements made since the time of settlement, may have been entitled to do.

15 to 28. (*Certificates of unliquidated arrears executable as decree of Civil Court; notice of certificate; objections to certificate; enforcement of certificate; register of certificates; inspection of register; entry of satisfaction; transmission of sums received.*) Rep. by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880).

29. (*Repeal of enactments.*) Rep. by the Repealing Act 1873 (12 of 1873).

Construc-
tion.

30. This Act shall be read with, and taken as part of, the said Act 11 of 1859^[1] as modified by Act 3 of 1862^[2] of the Lieutenant-Governor of Bengal in Council.

[¹] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[²] The Bengal Land-revenue Sales (Amendment) Act, 1862. It is printed, *ante*, p. 1.

(Schedules.)

SCHEDULES A, B, C, D.

Rep. by the Amending Act, 1903 (1 of 1903).

SCHEDULE B.

Rep. by the Repealing Act, 1873 (12 of 1873).

BENGAL ACT 1 OF 1869.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1869.)

CONTENTS.

SECTION.

1. Definition of "animal."
2. Penalty on cruelty to animals.
3. Penalty on baiting animals, or inciting them to fight.
4. Penalty on permitting diseased animals to go at large or die in public places.
5. Penalty for employing animal unfit for labour.
- 5A. Penalty for practising *phuká*.
- 5B. Infirmaries.
- 5C. Limitation of prosecutions.
6. Trial of offences in Calcutta.
7. Trial of offences out of Calcutta.
8. (*Repealed.*)
9. Limit of Act.
10. Power to extend Act.

BENGAL ACT 1 OF 1869.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1869.)^[1]

(10th March, 1869.)

An Act for the Prevention of Cruelty to Animals.

Whereas it is expedient to make provision for the prevention of cruelty to animals; It is enacted as follows:—

[²]1. In this Act, the word “animal,” means any domestic or cap- Definition of
tured animal. “animal.”

2. Every person who shall cruelly and wantonly beat, illtreat, abuse, Penalty on
torture, overdrive or overload, or cause to be beaten, ill-treated, abused, cruelty to
tortured, overdriven or overladen, any animal, shall be liable to a fine animals.
which may extend to one hundred rupees.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code. That Act is now known as the Amending Act, 1903—*vide* Act 10 of 1914, Sch. II.

Ben. Acts, 1 and 3 of 1869 and 3 of 1900 may be cited together as the Bengal Cruelty to Animals Acts, 1869 to 1900—see Ben. Act 3 of 1900, s. 3 (2), in Vol. III of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 887, and for Proceedings in Council, see *ibid*, Supplement, 1868, pp. 278 and 877; Supplement, 1869, pp. 15 and 29.

LOCAL EXTENT.—This Act applies to the town and suburbs of Calcutta (see s. 9, *post*, p. 93), and may be extended to any city, town, station, bazar, cantonment, village, district or portion of a district in Bengal (see s. 10, *post*, p. 93).

The application of the Act is barred—

in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code:

in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 in Vol. I of this Code.

ARREST.—For power of police to arrest, without a warrant, persons committing offences against this Act, see Ben. Act 3 of 1869, *post*, p. 103.

OTHER ACTS.—A similar Act, passed by the Governor General of India in Council, is the Prevention of Cruelty to Animals Act, 1890 (11 of 1890), printed in General Acts, 1887-97, Ed. 1909, p. 289. Power to extend that Act, or any part of it, to Bengal, is given by s. 1 (2). For a list of notifications issued under section 1 (2) of Act 11 of 1890 for Bengal as constituted on the 31st March, 1912, see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Part IV.

Other enactments giving powers of punishment for cruelty to animals are the Indian Penal Code (45 of 1860), ss. 428, 429 (printed in General Acts, 1834-67, Ed. 1909, p. 353), the Police Act, 1861 (5 of 1861), s. 34 (2) (printed in *ibid*, p. 391), and the Stage-Carriages Act, 1861 (16 of 1861), s. 9 (printed in *ibid*, p. 398).

For power to make rules for prevention to cruelty to animals—

in cantonments, see the Cantonments Act, 1910 (15 of 1910), s. 24 (24); and

in public parks, see the Bengal Public Parks Act, 1904 (Ben. Act 2 of 1904), s. 4 (e), (i), in Vol. III of this Code.

[²] This section was substituted for the original s. 1 by the Bengal Cruelty to Animals Act, 1900 (Ben. Act 3 of 1900), s. 1, printed in Vol. III of this Code.

The original section ran thus:—

“1. The word ‘animal’ shall be taken to mean any domestic or tamed quadruped, or any domestic or tamed bird.”

(Secs. 3-5B.)

Penalty on
baiting
animals, or
inciting
them to
fight.

3. Every person who shall incite any quadrupeds or birds, whether domestic or wild, to fight, or shall bait any animal, or shall aid or shall abet any one in so doing, shall be liable to a fine which may extend to fifty rupees.

Penalty on
permitting
diseased
animals to
go at large
or die in
public
places.

4. Every person who shall wilfully and knowingly permit any animal, of which he may be owner, to go at large in any public street, road or thoroughfare, while such animal is affected with contagious or infectious disease, or shall wilfully permit any diseased or disabled animal, of which he may be owner, to die in any public street, road or thoroughfare, shall be liable to a fine which may extend to one hundred rupees.

Penalty for
employing
animal unfit
for labour.

[¹]5. If any person employs in any work or labour any animal which, by reason of any disease, infirmity, wound, sore or other cause, is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

Penalty for
practising
phuká.

[¹]5A. If any person performs upon any cow the operation called *phuká* he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Infirmaries.

[¹]5B. (1) The Local Government may, by general or special order, [²] appoint places to be infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed.

(2) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until it is, in his opinion, again fit for the work or labour on which it has been ordinarily employed.

(3) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police, may from time to time prescribe.

(4) If the owner refuses or neglects to pay such cost and to remove the animal within such time as the Magistrate referred to in sub-section

[¹] These ss. 5 to 5C were substituted for the original s. 5 by Ben. Act 3 of 1900, s. 2, in Vol. III of this Code.

The original section 5 ran thus :—

“Every person who shall employ or cause to be employed in any work or labour any animal which, in consequence of any disease, infirmity, wounds or sores, is unfit to be so employed, shall be liable to a fine which may extend to fifty rupees.”

[²] For a list of orders made under s. 5B (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 5C.-10.)

(2) may prescribe, such Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

(5) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him; but the owner shall not be liable to make any payment in excess of the proceeds of the sale.

[¹]5C. A prosecution for an offence against this Act shall not be instituted after the expiration of three months from the date of the commission of the offence. Limitation of prosecutions.

6. All complaints of offences against the provisions of this Act, alleged to have been committed in the town of Calcutta, shall be heard and determined in a summary way by some Police Magistrate[²] of Calcutta. Trial of offences in Calcutta.

7. Every charge of an offence against the provisions of this Act, alleged to have been committed out of Calcutta, may be heard and determined by any officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, and the provisions of the Code of Criminal Procedure[³] shall apply to the trial of every such charge. Trial of offences out of Calcutta.

25 of 861.

8. (*Repeal of enactments.*) *Rep. by the Repealing Act, 1873 (12 of 1873).*

9. This Act shall extend to the town of Calcutta and to the suburbs of the town of Calcutta as defined by any notification under section 1 of [⁴] [Bengal Act 2 of 1866]. Limit of Act.

10. It shall be lawful for the Lieutenant-Governor of Bengal,[⁵] by an order[⁶] published in the Calcutta Gazette, to extend this Act to any Power to extend Act.

[¹] These ss. 5 to 5C were substituted for the original s. 5 by Ben. Act 3 of 1900, s. 2, in Vol. III of this Code.

The original section 5 ran thus :—

“Every person who shall employ or cause to be employed in any work or labour any animal which, in consequence of any disease, infirmity, wounds or sores, is unfit to be so employed, shall be liable to a fine which may extend to fifty rupees.”

[²] Now “Presidency Magistrate”—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3, in General Acts, 1898-1903, Ed. 1909, p. 40.

[³] This reference to Act 25 of 1861 must now be taken to be made to the Code of Criminal Procedure, 1898 (5 of 1898)—see s. 3 (1) of the latter Act, in General Acts, 1898-1903, Ed. 1909, p. 40.

[⁴] These words and figures in square brackets in s. 9 were substituted for the words and figures “the said Act 2 of 1866” by the Amending Act, 1903 (1 of 1903), printed in Vol. I of this Code. The short title of Bengal Act 2 of 1866 is “The Calcutta Suburban Police Act, 1866.” The Act is printed in the Bengal Code (1913-1915), Vol. II, p. 53.

[⁵] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁶] For a list of orders made under s. 10, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

city, town, station, *bazar*, cantonment, village, district or portion of a district, to be mentioned and defined in such order; and from time to time, by any order published, as aforesaid, to revoke, vary, amend or alter any such order.

BENGAL ACT 2 of 1869.

(THE CHOTA NAGPUR TENURES ACT, 1869.)

CONTENTS.

PREAMBLE.

SECTION.

1. Construction.
2. Power to appoint Commissioners.
Limits of jurisdiction.
3. Duties of Special Commissioner.
4. Powers of Special Commissioner.
5. Contents of record.
6. Power to restore persons wrongfully dispossessed.
7. Presumption as to services to be rendered.
8. Lands not to be registered if tenure commenced within twenty years.
9. Power to apply for commutation of services.
10. On such application, notice to appoint assessors to be served.
11. Special Commissioner to hear application with assessors.
12. Decision to be by Special Commissioner.
13. Review of decision by Special Commissioner alone.
14. Power of appeal.
15. Power to apply for review of judgment.
16. Application within a month.
17. Power to grant or refuse review.
18. Review not to be granted without notice.
19. On grant of application for review, re-hearing to be directed.
20. Decision to be final.
21. No *mukhtar* nor *vakil* to be heard.
22. (*Repealed.*)
23. Lieutenant-Governor may make rules.
24. Effect of judgment in suits commenced after Act passed.
25. Register to be confirmed and published.
26. Register to be conclusive evidence of matters recorded therein.
27. Short title.

(BENGAL ACT 2 OF 1869.)^[1]

THE CHOTA NAGPUR TENURES ACT, 1869.

(17th March, 1869.)

An Act to ascertain, regulate and record certain tenures in Chota Nagpur.

Whereas from a very early time certain tenures have existed in Chota Nagpur, known as *bhuinharri*, held by persons claiming to be descendants of the original founders of the villages in which such lands are situated, or their assigns; and also certain similar tenures known as *bhet-kheta*, *dálikatari*, and *pahnai*, consisting of lands set apart for the duties which the village "*páhan*," or priest, is required to perform, and for his maintenance, and also other similar tenures known as "*mahtoai*," consisting of lands allotted to the village *mahto*, or collector of rents; Preamble.

And whereas, where the above tenures are found, there are also lands known as *majhahas*, reserved for the use of the respective proprietors of the villages, and at their absolute disposal, and also lands known as *bhet-kheta*, ordinarily assigned as remuneration to the villagers who work for the proprietor or his assigns on the *majhahas* land;

And whereas disputes have arisen rendering it desirable that these tenures should be defined and recorded, and a register made of all rights, privileges, immunities and liabilities affecting the holders thereof;

It is enacted as follows:—

1. In the construction of this Act the words and expressions following shall have the meanings hereinafter in this section attributed to them respectively, unless a contrary sense be apparent from the context: Construction.

the word "*bhuinharri*" shall include the tenures mentioned in the preamble as *bhet-kheta*, *dálikatari*, *pahnai* and *mahtoai*: "*Bhuinharri*."

the word "*majhahas*" shall include the tenures mentioned in the preamble as *bhet-kheta*: "*Majhahas*."

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 1848, and for Proceedings in Council, see *ibid*, Supplement, 1868, pp. 846 and 871; Supplement, 1869, pp. 16 and 30.

LOCAL EXTENT.—This Act extends only to the Chota Nagpur Division—see the title.

SAVINGS.—This Act is not affected by the Chota Nagpur Tenancy Act, 1908 (Ben. Act 5 of 1908)—see s. 271 of the latter Act, in Vol. III of this Code.

The powers conferred on a Special Commissioner or on the Commissioner of the Chota Nagpur Division by this Act are not affected by the Chota Nagpur Incumbered Estates Act, 1876 (6 of 1876)—see s. 24 of the latter Act, printed in Vol. I of this Code.

(Secs. 11-17.)

Special Commissioner to hear application with assessors.

11. Upon the day which shall have been appointed by the Special Commissioner for the attendance of the parties and assessors as hereinbefore is provided, the Special Commissioner shall, with the assistance of any assessors who may have been, within the time hereinbefore respectively in that behalf mentioned, duly nominated as aforesaid, and who may be present; and, if there be no such assessors, then without such assistance proceed to consider and determine the amount of rent fairly and equitably to be payable in commutation of the conditions and services other than rent to which such tenure may be subject.

Decision to be by Special Commissioner.

12. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Special Commissioner, but the decision is vested exclusively in the Special Commissioner.

Review of decision by Special Commissioner alone.

13. In case any review of any decision under section 12 may be ordered, such review shall be heard and determined by the Special Commissioner without the assistance of assessors; and in case, in consequence of any order on appeal, a further inquiry into the subject-matter of any such decision may be necessary, such further inquiry may, if he shall so think fit, be heard and determined by the Special Commissioner without the assistance of assessors.

Power of appeal.

14. Any person who may be aggrieved by any decision or order of the Special Commissioner made under this Act may appeal to the Commissioner of the division against such decision or order by a petition; but no such petition shall be received after the expiration of three months from the date of such decision or order, unless sufficient cause for the delay be shown to the satisfaction of the said Commissioner of the division, who shall have power to hear and determine the matter of every such petition of appeal.

Power to apply for review of judgment.

15. Any person considering himself aggrieved by any order or decision of the Special Commissioner from which no appeal shall have been preferred, or by any order of the Commissioner of the division in appeal, may apply for a review of judgment by the officer by whom such order or decision was made.

Application within a month.

16. Such application may be made within one month from the date of the order or decision, and not afterwards.

Power to grant or refuse review.

17. If the Special Commissioner or the Commissioner of the division, as the case may be, shall be of opinion that there are not any sufficient grounds for a review, he shall reject the application: but if he shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Special Commissioner or the Commissioner of the division, as the case may be,

(Secs. 18-25.)

shall grant the review, and his order in either case, whether for rejecting the application or granting the review, shall be final.

18. No review of an order or decision shall be granted until notice shall have been given to every person who had appeared in the proceedings in which such order or decision was made, and whose interest would be injuriously affected by the review desired.

Review not to be granted without notice.

19. When an application for a review of judgment is granted, such order shall be made for re-hearing the matter in respect of which such order or decision shall have been made as may seem proper.

On grant of application for review, rehearing to be directed. Decision to be final.

20. No decision or order of the Special Commissioner shall be in any way altered, varied or reversed, save on review by the Special Commissioner under sections 15, 16, 17, 18 and 19 of this Act, or by appeal to the Commissioner of the division under section 14 of this Act; and no suit shall be received in any Court to vary or set aside any such order or decision of the Special Commissioner, or any decision or order upon appeal or upon review by the Commissioner of the division, made under the provisions of this Act; and every such decision or order upon appeal by the Commissioner of the division shall be final, unless it be altered, varied or reversed by the said Commissioner on review under sections 15, 16, 17, 18 and 19 of this Act.

21. No *mukhtar* nor *vakil* shall, without the consent of the Special Commissioner, be heard in any proceeding before such Special Commissioner.

No *mukhtar* nor *vakil* to be heard.

22. [*Exemption of petitions under Act from stamp-duty.*] *Rep. by the Court-fees Act, 1870 (7 of 1870).*

23. It shall be lawful for the said Lieutenant-Governor from time to time to make such rules^[1] and orders as to him may seem fit for regulating the practice and procedure to be followed in making the inquiries, investigations, demarcations and registers required by this Act, and all reviews thereof and appeals therefrom; and such rules and orders, when published in the Calcutta Gazette, shall have the same force and effect as if the same were a portion of this Act.

Lieutenant-Governor may make rules.

24. No judgment, decree or order in any suit instituted after the passing of this Act shall be evidence in any inquiry before the Special Commissioner respecting the tenure upon which any land is held, or the rents, services or conditions to which any land is subject.

Effect of judgment in suits commenced after Act passed.

25. The register of each village, prepared under the provisions of section 5 of this Act, shall, when finally revised and corrected in accordance with any decisions and orders of the Special Commissioner and the

Register to be confirmed and published.

[1] For rules, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. II.

(Secs. 26-27.)

Commissioner of the division, under this Act, be confirmed by the Commissioner of the division, and such confirmation shall be published forthwith in the Calcutta Gazette.^[1]

Register to
be conclusive
evidence of
matters re-
corded there-
in.

26. Every register to be prepared under this Act, after publication of the confirmation thereof in pursuance of the section next preceding, shall be conclusive evidence of all matters recorded in such register in pursuance of this Act; and, from and after such publication of the confirmation of the register relating to any village, no evidence shall be received that any lands in such village not mentioned in such register are of *bhuinharri* or of *majhahas* tenure.

Short title

27. This Act shall be called the Chota Nagpur Tenures Act, 1869.

^[1] For a list of notifications issued under s. 25, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I.

BENGAL ACT 3 OF 1869.

[THE BENGAL CRUELTY TO ANIMALS (ARREST) ACT, 1869.][¹]

(25th August, 1869.)

An Act to enable Police-officers to arrest without warrant persons guilty of cruelty to Animals.

Whereas it is expedient to enable police-officers in certain places to arrest without warrant any person committing, within their view, any offence against Act 1 of 1869[²] passed by the Lieutenant-Governor of Bengal in Council, entitled an Act for the Prevention of Cruelty to Animals; It is enacted as follows:—

1. Every Police-officer may arrest without a warrant any person committing, in his view, any offence against the said Act 1 of 1869.[²] Arrest of person guilty of cruelty.

2. This Act shall apply to the town of Calcutta, as defined in Act 4 of 1866[³] passed by the Lieutenant-Governor of Bengal in Council, and in the suburbs of the Town of Calcutta, as the same may from time to time be defined by any notification to be from time to time published by the said Lieutenant-Governor, in pursuance of the provisions of Act 2 of 1866,[⁴] and save as hereinafter is provided, to such towns and suburbs only. Act to apply to Calcutta and suburbs.

3. It shall be lawful for the Lieutenant-Governor of Bengal[⁵] by a notification[⁶] to be published in the Calcutta Gazette, to extend this Act to any town, suburbs, district or tract of country, to be mentioned and defined in such notification; and from and after the publication of such notification this Act shall extend and apply to the town, suburb, district or tract of country therein mentioned and defined. Power to extend Act.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

This Act, with Ben. Acts 1 of 1869 and 3 of 1900, may be cited together as the Bengal Cruelty to Animals Act, 1869 to 1900—see Bengal Act 3 of 1900, s. 3 (2), in Vol. III of this Code.

LEGISLATIVE PAPERS.—For Proceedings in Council, see the Calcutta Gazette, 1869, Supplement, pp. 504, 525 and 542.

LOCAL EXTENT.—This Act applies to the town and suburbs of Calcutta (see s. 2), and may be extended to any town, suburb, district or tract of country in Bengal (see s. 3).

The application of the Act is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Pargana Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

[²] The Bengal Cruelty to Animals Act, 1869. It is printed, *ante*, p. 91.

[³] The Calcutta Police Act, 1866. It is printed in the Bengal Code (1913—1915), Vol. II, p. 89.

[⁴] The Calcutta Suburban Police Act, 1866. It is printed, *ante*, p. 53.

[⁵] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁶] For a list of notifications issued under section 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

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BENGAL ACT 7 OF 1869.

(THE BENGAL POLICE ACT, 1869.)^[1]

(29th September, 1869.)

An Act to amend the constitution of the Police-Force in Bengal.

Whereas it is expedient that the entire police-establishment in the Preamble. provinces under the control of the Lieutenant-Governor of Bengal^[2] should cease to be one police-force, and that the said provinces should cease to be one general police-district under one Inspector-General; It is enacted as follows:—

1. (*Repeal of section 2, Act 5 of 1861.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. It shall be lawful for the Lieutenant-Governor of Bengal,^[2] from time to time, to divide the said provinces into as many general police-districts as he may think fit, and from time to time to vary and

Power to divide the provinces into police-districts.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1869, p. 484, and for Proceedings in Council, see *ibid*, Supplement, 1869, pp. 155, 265, 291, 341 and 645.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title and preamble.

The Act is in force in the Sonthal Parganas—see Vol. IV, Pt. VI.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Pt. III, but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—The General Police Acts in force in Bengal are—

(1) the Police Act, 1861 (5 of 1861), printed in General Acts, 1864-67, Ed. 1909, p. 378, and

(2) the Police Act, 1888 (3 of 1888), printed in General Acts, 1887-97, Ed. 1909, p. 78.

For further local enactments passed by the Bengal Legislative Council relating to the Police, see—

the Cuttack Police Regulation, 1805 (13 of 1805), in Vol. I of this Code.

the Calcutta Suburban Police Act, 1866 (Ben. Act 2 of 1866), printed in the Bengal Code (1913-15), Vol. II, p. 53.

the Calcutta Police Act, 1866 (Ben. Act 4 of 1866), *ibid*, p. 89.

the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870), *post*, p. 175.

the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), *post*, p. 109.

the Chittagong Hill tracts Frontier Police Regulation, 1881 (3 of 1881), in the Bengal Code (1913-15), Vol. I.

the Calcutta Police Act, 1898 (Ben. Act 1 of 1898), in the Bengal Code (1913-15), Vol. III.

the Calcutta and Suburban Police (Superannuation Fund) Act, 1905 (Ben. Act 6 of 1905), in the Bengal Code, Vol. III.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 3-6.)

alter any of such general police-districts, or to consolidate two or more of such general police-districts into one district, as he may think fit.

Power to
appoint in
districts per-
sons to exe-
cute duties
of Inspector
General

3. It shall be lawful for the said Lieutenant-Governor in each such general police-district to appoint some person to exercise in such district the powers of an Inspector-General of Police, whether such person shall or shall not hold any other office under the said Lieutenant-Governor; and the administration of the police throughout such general police-district, and all powers and authorities by the said Act 5 of 1861^[1] or any other Act conferred on an Inspector-General of Police, shall be vested in such person.

Police-estab-
lishment
in each dis-
trict to be
considered
one police
force.

4. The entire police-establishment in every such district shall, for the purposes of the said Act 5 of 1861,^[1] be deemed to be one police-force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the said Lieutenant-Governor subject to the sanction of the Governor General of India in Council.

Power to em-
ploy police
out of dis-
trict.

5. It shall be lawful for the Lieutenant-Governor to employ members of the police-force who have been enrolled in, or appointed to, any one general police-district, in any other general police-district within the provinces subject to his control; and the powers conferred on police-officers by the Code of Criminal Procedure^[2] may be by them exercised in any portion of the said provinces without reference to the local limits of the general police-district to which they may respectively belong.

Construction.

6. This Act shall be read and taken, in the provinces under the control of the Lieutenant-Governor of Bengal,^[3] as part of the said Act 5 of 1861.^[1]

^[1] The Police Act, 1861. It is printed in General Acts, 1834-67, Ed. 1909, p. 373.

^[2] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. The Act of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). This reference should now be taken to be made to the Act of 1898—see s. 3 (1) of that Act, in General Acts, 1898-1903, Ed. 1909, p. 40.

^[3] This includes the present Province of Bihar and Orissa except the District of Sambalpur.

BENGAL ACT 6 OF 1870.
(THE VILLAGE CHAUKIDARI ACT, 1870.)

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BENGAL ACT 6 OF 1870.

(THE VILLAGE CHAUKIDARI ACT, 1870.)^[1]

(19th October, 1870.)

An Act to provide for the appointment, dismissal and maintenance of village-*chaukidars*.

Whereas it is expedient to make provision for the appointment, dis- Preamble.
missal and maintenance of village-*chaukidars* in the provinces subject
to the Lieutenant-Governor of Bengal;^[2] It is enacted as follows:—

1. The following words and expressions shall, in the construction of Definitions.
this Act, have the several meanings hereby assigned to them respect-
ively, except where a different intention shall appear from the context
(that is to say):—

the words ^[3]“District Magistrate” shall mean the chief officer “District
charged with the executive administration of a district in criminal Magistrate.”
matters by whatsoever designation such officer is called:

* * * * *

The words “*chaukidari chakaran* lands” shall mean lands which “*Chaukidari
chakaran
lands.*”
may have been assigned, otherwise than under a temporary settlement,
for the maintenance of the officer who may have been bound to keep
watch in any village and report crime to the police, and in respect to

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1870, page 357; and for Proceedings in Council, see *ibid*, Supplement, 1870, pp. 53, 179, 305, 333, 349, 365 and 385.

LOCAL EXTENT.—This Act applies to districts and sub-divisions in Bengal to which it is extended by order under s. 68—see that section, *post*, p. 126.

The Act has been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3 to be in force in the District of Manbhum and Pargana Dhalbhum in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Part III; but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, *ibid*.

EXTENSION OF PROCEDURE.—As to the application of portions of this Act to the recovery of expenses and assessments for sanitary purposes in a Union, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 118 (as originally enacted) and ss. 117 and 118C (3) (as amended by Bengal Act 5 of 1908), *post*, pp. 694 and 697.

AMENDING ACTS.—Bengal Acts 1 of 1871, 1 of 1886 and 1 of 1892 are to be read with, and taken as part of, this Act—see Ben. Act 1 of 1871, s. 7 (*post*, p. 129), Ben. Act 1 of 1886, s. 1 (*post*, p. 715), and Ben. Act 1 of 1892, s. 1 (in Vol. III of this Code).

^[2] This includes the present Province of Bihar and Orissa.

^[3] The words “District Magistrate” were substituted for the words “Magistrate of the District” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

^[4] The definition of “Magistrate” was repealed by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 1 (1), and is omitted.

(Secs. 2-3A.)

which such officer may be at the time of the passing of this Act liable to render service to a *zamindar*:

“*Zamindar*.” the word “*zamindar*” shall mean the person whose name is registered in the general register of estates paying revenue directly to Government as the proprietor of an estate so paying revenue, or the person whose name is registered in the general register of rent-free tenures as proprietor of a rent-free tenure.

Repeal of
portion of
Regulation
20 of 1817.
Appointment
of *panchayat*.

2. Section 21, Regulation 20 of 1817,^[1] is hereby repealed^[2] as to all villages to which this Act may apply.

[3] 3. The District Magistrate may,—

- (1) by an order in writing, appoint not less than three nor more than five residents in any village within the district of which he has charge to be the *panchayat* thereof; or
- (2) he may, with the previous sanction of the Local Government, direct that the adult male rate-paying residents of any village shall select, according to any rules that may be prescribed by the Local Government and published in the Calcutta Gazette, not less than three nor more than five residents of the village to be the *panchayat* thereof; and the District Magistrate shall, if he approves of the persons so selected, appoint such persons to be the *panchayat*; but if in his opinion, any person so selected is, for reasons to be recorded by him in writing, unfit to be a member of the *panchayat*, the District Magistrate shall appoint a fit and proper resident to be a member of the *panchayat*:

Provided that no *panchayat* shall be appointed in any place to which the Bengal Municipal Act, 1834^[4] has been, or may hereafter be, extended: Ben. Act 3 of 1834.

Provided also that the Local Government shall be entitled to prescribe that in certain specified local areas, to be notified^[5] in the Calcutta Gazette, the number of persons to be appointed to discharge the duties of a *panchayat* may be reduced to one.

[6] 3A. The District Magistrate may from time to time by an order in writing, with the sanction of the Commissioner, delegate his powers

Delegation
of powers
by the
District
Magistrate.

[1] The Bengal Police Regulation, 1817.

[2] This repeal does not take effect in any village or union until a *chaukidar* has been appointed therein under the provisions of this Act—see the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 1, *post*.

[3] This section was substituted for the former s. 3 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 3, in Vol. III of this Code.

[4] Printed, *post*.

[5] For a notification issued under this proviso, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI

[6] S. 3A was inserted by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 4, in Vol. III of this Code.

(Secs. 4-6.)

under this Act, either wholly or in part, to any Magistrate of the first class subordinate to him, or to any Magistrate in charge of a sub-division or to the District Superintendent of Police; and, by a like order, and with the same sanction may withdraw such delegated powers.

[¹]4. The District Magistrate may, from time to time, by an order in writing under his hand, declare any local area or group of dwellings, within the district of which he has charge, to be a village for the purposes of this Act. Power to define a village.

5. Whenever the majority in number of the adult male residents in any village * * * [²] shall, by a writing signed by them, apply to the [³] [District Magistrate] for the appointment of a *panchayat* in such village * * *, [⁴] it shall be lawful for him to appoint a *panchayat* under this Act in such village * * * [⁴] without regard to the number of houses therein contained, and all the provisions of this Act shall apply to such *panchayat* and to such village * * * [⁴] Power to appoint *panchayat* on application of villages.

[⁵]6. Whenever any member of a *panchayat* shall die or cease to be a member of such *panchayat*, the [⁶] [District Magistrate] shall, by writing under his hand, call on the remaining members of the *panchayat* to nominate within thirty days a fit and proper person to be appointed as member of the *panchayat* in the room of such member so dying or ceasing to be a member, and the [⁶] [District Magistrate] shall, unless he considers such nomination improper, appoint the person so nominated to be a member of the *panchayat*: Succession of member of *panchayat*.

Provided that if no person shall have been so nominated, or if in the opinion of the [⁶] [District Magistrate] the person nominated is, for

[¹] This section was substituted for the original s. 4 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 5, in Vol. III of this Code.

The original s. 4 ran as follows:—

“4. If two or more villages containing together not less than eighty houses are so situate that some house in one of such villages is situate within one mile of some house in each of the others, it shall be lawful for the Magistrate to form such villages into a union, and for the purposes of this Act such union shall be deemed to be a village.”

[²] The words “or in two or more villages so situate as in s. 4 is set forth” were repealed by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 6, and are omitted.

[³] The words “District Magistrate” in s. 5 were substituted for the words “Magistrate of the district” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[⁴] The words “or villages” in s. 5 were repealed by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 6, and are omitted.

[⁵] This section was substituted for the original s. 6 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 3, *post*. The original s. 6 ran as follows:—

“6. Whenever any member of a *panchayat* shall die or cease to be a member of such *panchayat*, the Magistrate of the district shall, by a *sanad* under his hand and seal, appoint some other person to be a member of such *panchayat* in the place or stead of the person so dying or ceasing to be a member.”

[⁶] The words “District Magistrate” in s. 6 were substituted for the word “Magistrate” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

(Secs. 7-9A.).

reasons to be recorded by him in writing, unfit to be appointed a member of the *panchayat*, the [¹][District Magistrate] shall appoint a fit and proper person to be a member of the *panchayat*.

Qualification
of members
of *panchayat*.

7. No person shall be appointed to be a member of a *panchayat* under this Act unless he be a resident in such village or the proprietor or holder of land therein or his local agent:

Provided that such proprietor or local agent shall not be so appointed unless he be resident within one mile from some part of such village.

Penalty on
refusing to
act as
member of
panchayat.

8. If any person, appointed to be a member of a *panchayat*, shall refuse to undertake the office, or wilfully omit to perform the duties thereof, and shall not within [²][thirty days] from the date of his appointment, or from such omission, show grounds to the satisfaction of the [³][District Magistrate] for such refusal or omission, he shall be liable to a fine which may extend to fifty rupees:

Provided that every person who shall have paid any fine under the provisions of this section shall thereupon cease to be a member of the *panchayat* and shall not be liable to be re-appointed a member of *panchayat* for the space of [⁴][three years] from the day of the payment of such fine.

Period for
which *panchayat*
to be
appointed.

[⁵]9. Every member of a *panchayat* appointed under section 3 shall be appointed for the term of three years.

Every member of a *panchayat* appointed under section 6 shall be appointed only for a term equal to the unexpired portion of the term for which the member whom he succeeds was appointed.

Exemption
from serving
on *panchayat*.

[⁶]9A. No member of a *panchayat*, after the expiry of his term of office, shall be again appointed a member of a *panchayat*, without his consent till after the lapse of three years.

[¹] The words "District Magistrate" in s. 6 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[²] The words "thirty days" in s. 8 were substituted for the words "fifteen days" by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 4, *post*.

[³] The words "District Magistrate" in s. 8 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[⁴] The words "three years" in s. 8 were substituted for the words "two years" by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 4, *post*.

[⁵] This section was substituted for the original s. 9 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 5, *post*, p. 715. The original s. 9 ran as follows:—

"9. It shall be lawful for any person who shall have served for the term of two years as a member of any *panchayat* to retire from such *panchayat*, and the person so retiring shall not without his own consent be appointed to serve on such *panchayat* until after the expiry of two years from the date of his retirement."

[⁶] Ss. 9A and 9B were inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 6, *post*, p. 716.

(Secs. 9B-13.)

[¹]9B. On the expiry of the term for which the members of a *panchayat* were appointed, the [²][District Magistrate] shall appoint a new *panchayat* in the manner prescribed in section 3, the outgoing *panchayat* continuing to exercise all the functions of a *panchayat* until such new *panchayat* has been appointed.

10. It shall be lawful for the [²][District Magistrate], by an order in writing signed by him, to remove or discharge any member of a *panchayat*.

[³]11. The District Magistrate shall determine the number of *chaukidars* to be employed in a village:

Provided that, without the sanction of the Commissioner, there shall not be more than one *chaukidar* for every sixty houses.

[⁴]12. The salaries of *chaukidars* appointed shall be determined by the District Magistrate:

Provided that such salaries shall not be less than two nor more than six rupees *per mensem*.

[⁵]13. The *panchayat* shall impose an assessment yearly in each village equal to the amount required for the pay and equipment of the *chaukidars*, together with fifteen *per cent.* above such amount, in order

[¹] Ss. 9A and 9B were inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 6, *post*.

[²] The words "District Magistrate" in ss. 9B and 10 were substituted for the words "Magistrate of the District" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[³] This section was substituted for the original s. 11 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 7, in Vol. III of this Code. The original s. 11 ran as follows:—

"11. The *panchayat* shall determine the number of *chaukidars* to be employed in a village:

Provided that there shall be at least two *chaukidars* appointed in every village in which there are one hundred and fifty houses, and one additional *chaukidar* for every complete number of one hundred houses beyond such number of one hundred and fifty."

[⁴] This section was substituted for the original s. 12 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 8, in Vol. III of this Code. The original s. 12 ran as follows:—

"12. The *panchayat* shall from time to time determine the monthly salaries of the *chaukidars* to be appointed:

Provided that such salaries shall not be less than three nor more than six rupees *per month*."

[⁵] This section was substituted for the original s. 13 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 9, in Vol. III of this Code. The original s. 13 ran as follows:—

"13. The *panchayat* shall raise in each village, by a yearly assessment, the amount required for the pay of the *chaukidars*, together with fifteen *per cent.* above such amount in order to provide for payment of the expenses of collection and losses from the non-realization of the rate from defaulters."

(Secs. 14-19.)

to provide for payment of the expenses of collection and losses from the non-realization of the rate from defaulters.

Persons
liable to
assessment.

[¹]14. All owners or occupiers of houses in any village, and any person who has within such village a *cutcherry* for collecting rents, shall be liable to assessment for the purposes of this Act.

Nature and
amount of
assessment.

15. The rate to be levied in any village for the purposes of this Act shall be an assessment according to the circumstances and the property to be protected of the persons liable to the same:

Provided that the amount to be assessed on any one person shall not be more than one rupee *per mensem*, and that all persons who, in the opinion of the *panchayat* are too poor to pay half an anna a month shall be altogether exempt from assessment under this Act.

Time and
form of
assessment.

16. The *panchayat* shall, two clear months[²] before the first day of the year current in the village, make such assessment upon the several persons liable thereto, and shall enter the same in a list, which shall specify the name of each person liable to be assessed, the trade, business or other description of such person, and the amount payable monthly by such person, and such list shall be by them published in some conspicuous part of the village at least fifteen days before the expiry of the said two months.

Power to con-
tinue former
assessment.

17. The *panchayat* may, instead of making a new assessment, revise or continue the assessment of the current year, and the assessment so revised or continued shall be in like manner published.

Duration of
assessment.

18. Every assessment so made, revised or continued shall commence and take effect upon the first day of the year current in the village next ensuing the date of publication thereof, and shall remain in force for one year, and until some other assessment properly made or revised under the provisions of this Act shall commence and take effect.

Power to
review
assessment.

19. Any person dissatisfied with the amount at which he has been assessed may, within one month after any publication of any assessment, apply to the *panchayat*, either orally or in writing, for a revision of the assessment, and the *panchayat* may confirm the assessment or amend the same.

[¹] This section was substituted for the original s. 14 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 10, in Vol. III of this Code. The original s. 14 ran as follows :—

“14. All owners or occupiers of houses in any village, and any *zamindar* who has within such village a *cutcherry* for collecting rents, shall be liable to assessment for the purposes of this Act.”

[²] As to the making of an assessment within one month after the appointment of a *panchayat*, see the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), ss. 2 to 4, *post*.

(Secs. 20-26.)

20. No appeal, as of right, shall lie from any order passed by a *panchayat* as regards the revision of any assessment; but the ^[1][District Magistrate] may call for the general list of assessment in any village, and shall so call for such list on the application of ten rate-payers in such village, and may pass such orders on any list so called for as he may think proper.

District Magistrate may revise assessment.

21. Every rate to be payable under this Act shall be payable by equal ^[2][quarterly] instalments; the instalment of rate on account of each ^[2][quarter] shall be due on the first day of such ^[2][quarter].

Rate payable quarterly in advance.

22. Every *panchayat* shall appoint one of their number to receive and collect the rate, and to grant receipts for the same and to keep the accounts thereof, and it shall be lawful for the *panchayat* to permit the person so appointed to retain any sum not exceeding ^[3][ten per cent.] of the amount collected by him to repay the costs of such collection.

Allowance for collecting rate.

23. The proceeds of every assessment to be levied under this Act in any village, together with any sum which may become applicable to the purposes of this Act, shall constitute a fund, which shall be called the *Chaukidari Fund* of such village.

Constitution of *Chaukidari Fund*.

24. If at the end of any year any surplus of the Fund may remain unexpended, such surplus shall be carried to the credit of the *Chaukidari Fund* for the ensuing year, and the amount to be raised by assessment in such ensuing year may in such case be reduced by the amount of such surplus.

Application of surplus.

25. Every person liable to pay any sum assessed upon him under this Act shall, within seven days after the day upon which any instalment of rate may be payable by him, pay or tender such instalment to the person appointed by the *panchayat* to receive the same.

Payment of instalment to be made within seven days.

26. Immediately after the tenth day of ^[4][quarter] the *panchayat* of every village, to which the provisions of this Act extend, shall prepare a list of the persons who may have failed to pay their respective instalments of the rate for such ^[4][quarter] showing the amount due from each of such defaulters, and shall publish such list in some conspicuous part of the village.

List of defaulters to be made out.

[¹] The words "District Magistrate" in s. 20 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[²] The words "quarterly" and "quarter," in s. 21, were substituted for the words "monthly" and "month," with retrospective effect, by the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 5, *post*.

[³] The words "ten per cent." in s. 22 were substituted for the words "six per cent." by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 7, *post*.

[⁴] The word "quarter," in s. 26, was substituted for the word "month," with retrospective effect, by the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 5, *post*.

(Secs. 27-32.)

Power to dis-
train for
rates.

27. The collecting member of the *panchayat* shall thereupon issue a writing in the form in Schedule A, signed by him, authorizing the *chaukidar*, or such other person as may be therein named, to levy, by the distraint and sale of a sufficient portion of the movable property of such defaulters, the amount of their respective arrears, together with sums equal to such arrears respectively by way of penalty.

Manner of
executing dis-
tress.

28. The person so authorized shall seize such movable property of such respective defaulters as he shall deem sufficient, and shall make an inventory of all movable property so seized, and shall at the same time give notice by beat of drum of the time and place where such movable property shall be sold.

Such time of sale shall be not less than two days nor more than five days from the time of the proclamation thereof.

Sale in execu-
tion of
warrant.

29. In case any defaulter shall not, within the time specified by such notice, pay the amount of such arrears payable by him, together with an equal amount by way of penalty, the movable property distrained, or such portion of it as may be necessary shall be sold by public outcry at the place and time specified, and the proceeds shall be applied in discharge of such amount and penalty, and the surplus, if any, shall be returned to the person in possession of the movable property at the time of the seizure.

Objections to
levy how to
be made.

30. Whenever any person whose name may have been included in any list of defaulters may dispute his liability to pay the amount mentioned in such list or any portion thereof, he may apply to the [¹][District Magistrate] either orally or writing, stating the grounds of his objection, and the [¹][District Magistrate] shall examine his objection and pass such order thereon as to him shall seem proper.

Custody of
property
distrained.

31. Any property distrained under the provisions of section 28 shall remain in the custody of the *chaukidar*, or of some other person whom the *panchayat* may appoint in that behalf.

What
property
may be
distrained
for rates.

32. All goods and chattels, except plough-cattle and tools and implements of trade or agriculture, found in or upon any house or land occupied by any defaulter, shall be deemed to be his property, and shall be liable to be distrained and sold for the recovery of the arrear.

If the goods and chattels distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

[¹] The words " District Magistrate," in s. 30, were substituted for the word " Magistrate," by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code

(Secs. 33-38.)

33. No arrears of any rate payable under this Act shall be recovered by distress after the expiration of one year from the day on which the same shall have become due. Distress not to be levied after a year.

34. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in any list assessment, notice, summons, power, writing, inventory or other proceeding relating thereto, nor shall such party be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for any special damage sustained by them, in any Court of competent jurisdiction, subject to the provisions of section 63 of this Act. Irregularities not to avoid distraint.

[¹]**35.** (1) The *panchayat* shall, when a vacancy exists, nominate a person to be a *chaukidar* under this Act, and the District Magistrate shall if satisfied with such nomination, appoint such nominee to be *chaukidar*: Appointment and dismissal of *chaukidars*.

Provided that if the *panchayat* fail to nominate within a reasonable time a person to be a *chaukidar*, or the District Magistrate is not satisfied with such nomination, the District Magistrate shall appoint any person he thinks fit to be a *chaukidar*.

(2) The District Magistrate, or the *panchayat* with the sanction of the District Magistrate, may, from time to time, dismiss any *chaukidar* so appointed.

36, 37. (*Appointment of chaukidars to be registered by police; power of Magistrate to dismiss chaukidars.*) Rep. by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 12.

38. Every *chaukidar* who may be guilty of any wilful misconduct in his office, or neglect of his duty, such misconduct or neglect not being an offence within the meaning of the Indian Penal Code,^[2] and not being of so grave a character as in the opinion of the ^[3][District Power to fine *chaukidars*.

[¹] This section was substituted for the original s. 35 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 11, in Vol. III of this Code. The original s. 35 ran as follows:—

“35. The *panchayat* shall appoint the persons to be *chaukidars* under the Act, and may, from time to time, with the sanction of the Magistrate, dismiss any such *chaukidars*.”

[²] Printed in General Acts, 1834-67, Ed. 1909, p. 248.

[³] The words “District Magistrate” in s. 38 were substituted for the word “Magistrate” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

(Sec. 39.)

Magistrate] to require his dismissal from his office, shall be liable to a fine which shall not exceed the amount of one month's salary.

Duties of
chaukidars.

[¹] 39. Every *chaukidar* appointed under the provisions of this Act shall perform the following duties:—

- 1st.—he shall give immediate information to the officer in charge of the police-station within the limits of which the village is situate of every unnatural, suspicious or sudden death which may occur, and of any offence specified in Schedule B which may be committed within his village, and he shall further keep the police informed of all disputes which are likely to lead to any riot or serious affray;
- 2nd.—he shall arrest all proclaimed offenders and any person who in his presence commits any offence specified in Schedule B, and any person against whom a hue-and-cry has been raised of his having been concerned in any such offence, whether such offence has been or is being committed within his village or outside of it, and shall, without delay, convey any person so arrested to the said police-station;
- 3rd.—he shall, to the best of his ability, prevent, and may interpose for the purpose of preventing, the commission of any offence specified in the said Schedule;
- 4th.—he shall assist private persons in making such arrests as they may lawfully make, and shall report such arrests without delay to the officer in charge of the said police-station;
- 5th.—he shall observe, and, from time to time, report to the officer aforesaid the movements of all bad characters within his village;
- 6th.—he shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood;
- 7th.—he shall report to the officer aforesaid, in a form signed by one member of the *panchayat*, the births and deaths, if any, which have occurred within his village at such intervals as the District Magistrate may determine;

[¹] This section was substituted for the former s. 39 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 13, in Vol. III of this Code.

(Secs. 40-43.)

8th.—he shall report to the officer aforesaid the death or absence for more than two consecutive months of any member of the *panchayat*;

9th.—he shall supply any local information which the District Magistrate or any officer of police may require;

10th.—he shall obey the orders of the *panchayat* in regard to keeping watch within his village and other matters connected with his duties as *chaukidar*;

11th.—he shall assist the person collecting the rate in making such collection.

40. Whenever the *chaukidar* may arrest any person, such *chaukidar* shall forthwith take the person so arrested to the police-station within the limits of which such village is situate:

Procedure on arrest by *chaukidars*.

Provided that, if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

41. The *panchayat* shall exercise a general control over the *chaukidars* and every member of such *panchayat* who may know or be informed of the commission within the village of any offence specified in Schedule B of this Act shall forthwith cause the same to be reported by the *chaukidar* to the officer in charge of the police-station within the limits of which the village may be situate, and, on failure of the *chaukidar*, such member shall himself report the same [1][or cause the same to be reported] to such officer.

Control of *chaukidars* by *panchayat*.

[2]42. All fines and penalties levied under this Act shall be credited to a District *Chaukidari* Reward Fund, the control over which shall rest with the District Magistrate.

Fines and penalties to be credited to District *Chaukidari* Reward Fund.

[3]43. Every *chaukidar* shall receive, quarter by quarter, the full amount of his salary from such officer [4][as the Local Government may, by rules made under this Act, prescribe or direct].

Mode of paying *chaukidars*.

[1] These words in square brackets in s. 41 were inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 9, *post*.

[2] This section was substituted for the original s. 42 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 14, in Vol. III of this Code. The original s. 42 ran as follows:—

“42. All fines and penalties levied under this Act shall be carried to the credit of the Village *Chaukidari* Fund and be applied as a portion thereof.”

[3] This section was substituted for the original s. 43 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 10, *post*. The original s. 43 ran as follows:—

“43. Every *chaukidar* shall receive, month by month, the full amount of his salary from the member of the *panchayat* appointed to collect the tax.”

[4] These words in square brackets in s. 43 were substituted for the words “or persons as the Magistrate shall appoint” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 15, in Vol. III of this Code.

(Secs. 44-46.)

Panchayat to pay or remit quarterly amounts for payment of *chaukidars*, etc.

[¹]44. Within thirty days after the end of each quarter, every *panchayat* shall pay or remit to such officer or person [²][as the Local Government may prescribe or direct] under the last foregoing section a sum equal to the pay of the *chaukidar* for the quarter, or any smaller amount which may stand to the credit of the *Chaukidari* Fund of the village.

Mode of realizing *chaukidar's* salary.

45. If it shall appear to the [³][District Magistrate] that there is no money to the credit of the Village *Chaukidari* Fund, and that the *panchayat* shall not have taken sufficient steps to realize from defaulters the arrears due from them, the [³][District Magistrate] [⁴][may issue his warrant] for the realization of the *chaukidar's* pay from the members of the *panchayat* by distress and sale of their movable property, and shall therein charge some person, therein named, with the execution thereof;

and upon such warrant such proceedings shall be had as hereinbefore directed to be had on any writing issued for the recovery of any arrears of the tax by this Act directed to be levied;

and the amount due to such *chaukidar* shall be paid to him out of the amount so levied, and the residue thereof, after payment thereof of all costs and expenses incurred in or about the execution of such warrant, shall be paid to the persons from whom such distress shall have been so levied.

[⁵][An application for the appointment of a *tahsildar* under section 46A shall not of itself be deemed a sufficient step to realize from defaulters the arrears due from them.]

Reimbursement of member of *panchayat* by whom salary is paid.

46. Any member of a *panchayat*, from or by whom any sum shall have been levied or paid under the provisions of the section last preceding, shall be reimbursed the amount so levied from or paid by him from any surplus of the Village *Chaukidari* Fund which may remain

[¹] This section was substituted for the original s. 44 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 11, *post*. The original s. 44 ran as follows:—

“44. Whenever the salary of any month shall not be paid in full to any *chaukidar* on or before the 15th of the month following, such *chaukidar* may apply to the Magistrate, who shall call upon the *panchayat* within 10 days to show cause why they should not pay the amount due to such *chaukidar*.”

[²] These words in square brackets in s. 44 were substituted for the words “as the Magistrate may appoint” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 16, in Vol. III of this Code.

[³] The words “District Magistrate,” in s. 45, were substituted for the word “Magistrate,” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[⁴] The words “may issue his warrant” in s. 45 were substituted for the words “shall issue his warrant” by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 12, *post*.

[⁵] This paragraph was added to s. 45 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 12, *post*, p. 716.

(Secs. 46A-48.)

at the end of the year in which such sum shall have been so levied or paid.

[¹]46A. The District Magistrate may at any time, on the application of the *panchayat* of any village, or of his own motion if, in his opinion, the collection of the rate is badly carried out, or if the *chaukidar* is not regularly paid, appoint a *tahsildar* to assist the person collecting the rate; and such *tahsildar* shall exercise all the powers vested in the *panchayat* for the collection of the said rate; and the District Magistrate shall, on a like application, and he may of his own motion, revoke such appointment. Appointment of *tahsildar*.

[²]46B. Every *tahsildar* appointed under the last foregoing section shall be remunerated at such rate and in such manner as the [³][District Magistrate] may, from time to time, with the sanction of the Commissioner of the Division, prescribe; and such remuneration shall be levied from those who have failed to pay their *chaukidari* assessments in the same manner and in the same proportion as the *chaukidari* assessment: Remuneration of *tahsildar*.

Provided that one *tahsildar* may, in the discretion of the [³][District Magistrate], be appointed for more than one village.

47. If it shall appear to the [³][District Magistrate] that the deficiency of the funds to the credit of the Village *Chaukidari* Fund has been caused by an erroneous assessment, the [³][District Magistrate] shall call for the assessment and revise the same as he shall think proper, and shall remit the same to the *panchayat*, and such *panchayat* shall forthwith proceed to levy the sums respectively appearing to be due by such revised assessment. Power to revise assessment.

[⁴]PART II.

Chaukidari Chakaran LANDS.

48. All *chaukidari chakaran* lands before the passing of this Act assigned for the benefit of any village in which a *panchayat* shall be *Chaukidari chakaran* lands to be transferred to zamindars.

[¹] This section was substituted for the former s. 46A by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 17, in Vol. III of this Code. The former section ran as follows:—

“46A. The Magistrate may at any time, on the application of the *panchayat* of any village, appoint a *tahsildar* in such village to assist the collecting member of such *panchayat*, and such *tahsildar* shall exercise all the powers vested in the *panchayat* for the collection of the *chaukidari* assessment, and the Magistrate shall, on a like application, revoke such appointment.”

[²] S. 46B was inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 13, *post*, p. 716.

[³] The words “District Magistrate” in ss. 46B and 47 were substituted for the word “Magistrate” by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[⁴] As to the application of Part II to *Chaukidari Chakaran* lands assigned before the commencement of this Act for the benefit of any part of a municipality, see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), s. 364, *post*.

(Secs. 49-55.)

appointed shall be transferred in manner and subject as hereinafter mentioned to the *zamindar* of the estate or tenure within which may be situate such lands.

Assessment
to be fixed at
one-half of
value.

49. All lands so transferred shall be subject to an assessment which shall be fixed at one-half of the annual value of such land according to the average rates of letting land similar in quality in the neighbourhood of such land, and such assessment shall be made by the *panchayat* of the village.

Collector to
make trans-
fer.

50. Such assessment when made by the *panchayat* shall be submitted to the Collector of the district, and he or any other officer exercising the powers of a Collector by him thereunto appointed may approve, or revise and approve, the same (provided that it shall be lawful for the *zamindar* to contest the assessment before it is so approved), and after such approval the Collector of the district shall, by an order under his hand in the form in Schedule C, transfer to such *zamindar* such land subject to the assessment so approved.

Effect of
transfer.

51. Such order shall operate to transfer to such *zamindar* the land therein mentioned subject to the amount of assessment therein mentioned, and subject to all contracts theretofore made, in respect of, under, or by virtue of, which any person other than the *zamindar* may have any right to any land, portion of his estate, or tenure, in the place in which such land may be situate.

Assessment
to be perma-
nent charge
on lands.

52. The amount of the assessment mentioned in such order shall be a permanent yearly charge on such land, and shall be payable to the collecting member of the *panchayat* yearly in advance on the first day of the year current in the village by the person for the time being entitled to recover the rents of such land from the occupier thereof.

Mode of
realization.

53. Every such assessment shall be deemed to be a demand to be realized in the manner hereinafter provided.

Notice of
arrear.

54. Whenever such assessment shall be in arrear for the space of fifteen days after it shall have become payable, the collecting member of the *panchayat* shall forward to the Collector of the district in which the land so assessed is situate notice of the amount of such arrear and the name of the person liable to pay such assessment, in the form in Schedule D annexed to this Act.

Mode and
effect of sale.

55. Immediately after the receipt of the said notice the Collector or other officer authorized to hold sales under the law for the time being in force for regulating sales of land for arrears of revenue shall proceed, without any preliminary notice for payment, to issue a notifica-

(Secs. 56-59.)

tion for sale under section 6 of Act 11 of 1859,^[1] passed by the Legislative Council of India;

and, unless the arrears be paid within the time mentioned in such notification, shall sell such land according to the provisions of such law as if such land were an estate within the meaning of Act 7 of 1868^[2] passed by the Lieutenant-Governor of Bengal in Council;

and all provisions of the law for the time being in force with respect to the sale of such estates shall apply to the sale of such land, and every such sale shall have such and the same force and effect as if the same were a sale of an estate for arrears of its own revenue, and such land shall be held by the purchaser thereof subject to such assessment, but freed from all other charges and incumbrances save those to which he would have been liable if the said land had been an estate sold for arrears of its own revenue.

56. Such Collector shall, out of the proceeds of such sale, after defraying the costs of and attending such sale, pay to the collecting member of the *panchayat*, within one week after such sale shall have become final, the amount due for arrears of such assessment, and pay the balance of such proceeds to the person named in the notice from the collecting member of the *panchayat* as the person liable to pay the assessment of such land. Application of proceeds of sale.

57. When any land shall have been transferred to any *zamindar* under the provisions hereinbefore contained, the right to the performance of any services to any person by the occupier of such lands in respect of his occupation thereof shall wholly cease and determine. Right to service from occupier of transferred land to cease.

58. In any district or part of a district in which may be situated lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, it shall be lawful for the Lieutenant-Governor of Bengal,^[3] by an order^[4] to be published in the Calcutta Gazette, to appoint a commission, consisting of one or more persons, to ascertain and determine the *chaukidari chakaran* lands and other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police in such district. Appointment of commission.

59. Whenever in any district in which such commission shall have been appointed, any question shall arise whether any or what lands are *chaukidari chakaran* lands or other lands before the passing of this Power to refer to commission question relating to *chakaran* land.

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[2] The Bengal Land-revenue Sales Act, 1868. It is printed, *ante*.

^[3] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[4] For a list of orders made under section 58, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 60-62.)

Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, it shall be lawful for such commission to inquire into such question.

Powers of
commission.

60. In inquiring into such question the commission shall, as far as may be necessary for the purposes of this Act, exercise all such and the same powers as are conferred by Regulation 7 of 1822^[1] and the Regulations and Acts amending the same upon a Collector making a settlement of land-revenue.

Duties of
commission
and effect of
their order.

61. Such commission shall demarcate the boundaries of any lands which they may determine to be *chaukidari chakaran* lands or other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police, and shall make orders under their hand setting forth the land which they shall have determined to be *chaukidari chakaran* lands or other lands as aforesaid, and the boundaries thereof, and the name of the village for the benefit of which such lands are assigned, and distinguishing whether such land be or be not *chaukidari chakaran* lands or other lands as aforesaid.

Every such order shall be final and conclusive respecting all matters hereinbefore required to be set forth in such order so far as the same shall be therein set forth.

PART III.

MISCELLANEOUS PROVISIONS.

Powers of
the *panchayat*
may be
exercised by
the District
Magistrate.

^[2]**62.** All powers vested in the *panchayat* for the nomination and dismissal of *chaukidars* and for making the assessments hereinbefore directed to be made may, in case the *panchayat*, after a notice in writing from the District Magistrate to exercise such powers, or any of them, refuse or, after the lapse of a reasonable time in that behalf, neglect forthwith to exercise the same, be exercised by the District Magistrate.

^[1] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol. I of this Code.

^[2] This section was substituted for the original s. 62 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 18, in Vol. III of this Code. The original s. 62 ran as follows:—

“62. All powers vested in the *panchayat* for the appointment and dismissal of *chaukidars* and for fixing the number of *chaukidars*, to be appointed, and the rate of their pay, and for making and levying the assessments hereinbefore directed to be made, may be exercised by the Magistrate or any person whom the Magistrate may, by any writing under his hand, authorize in that behalf, in case the *panchayat* shall, for fifteen days after a notice from the Magistrate to exercise such powers or any of them, refuse or neglect to exercise the same.”

(Secs. 63-66.)

63. No action shall be brought against the ^[1][District Magistrate], nor against any *panchayat*, nor against any member thereof, nor against any of his or their officers, nor against any person acting under his or their direction,

Indemnity clause.

for anything done or professing or purporting to be done under this Act,

until the expiration of one month next after notice in writing shall have been delivered or left at the office of the ^[1][District Magistrate] and at the place of abode of such person, explicitly stating the cause of action, and the name and place of abode of the intended plaintiff;

and, unless such notice be proved, the court shall find for the defendant;

and every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards;

and, if any person to whom any such notice of action is given shall before action brought tender sufficient amends to the plaintiff, such plaintiff shall not recover.

64. The Commissioner of Circuit shall have a general controlling power over all proceedings of *panchayats* * * * ^[2] and ^[3] [District Magistrates] under this Act.

Control vested in Commissioner of Circuit.

65. The Lieutenant-Governor of Bengal^[4] may, from time to time, frame rules^[5] for the guidance of the *panchayats*, for regulating the practice and procedure of any commission in trying or determining any question referred to them, and for any other purposes connected with this Act, and may, from time to time, alter, vary, or revoke the same, and shall publish every such rule or alteration, variation or revocation of a rule in the Calcutta Gazette; and the rules for the time being in force shall, from their publication, have such and the same force and effect as if they were herein enacted.

Rules for guidance of *panchayat*.

66. Nothing in this Act contained shall diminish or in any way affect any liability, duty or obligation of any *zamindar*, under any law

Duty of *zamindars* to report crimes, not affected.

[1] The words "District Magistrate," in s. 63, were substituted for the word "Magistrate," by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), in Vol. III of this Code.

[2] The words "and Magistrates," which were repealed by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (3), are omitted.

[3] The words "District Magistrates" in s. 64 were substituted for the words "Magistrates of districts" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (3), in Vol. III of this Code.

[4] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[5] For lists of rules made under s. 65, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 67-69. Schedule A.)

in force at the time of the passing of this Act to report crimes or offences occurring within his estate or tenure.

Village
watch where
panchayat
not appoint-
ed, not
affected.

67. Nothing in the Act contained, save the provisions of sections 58, 59, 60 and 61, shall affect any lands before the passing of this Act assigned for the maintenance, in any village in which a *panchayat* may not be appointed, of an officer to keep watch in such village and to report crime to the police, and every such officer in such village shall be bound to perform the same duties, and shall have the same rights unto such lands, and may be removed and a successor to him appointed, as if this Act had not been passed.

Commence-
ment.

68. This Act shall commence and take effect in those districts or sub-divisions of districts in the provinces subject to the Lieutenant-Governor of Bengal^[1] to which the said Lieutenant-Governor^[2] shall extend it by an order^[3] published in the Calcutta Gazette, and thereupon this Act shall commence and take effect in the districts and sub-divisions of districts named in such order, on the day which shall be in such order provided for the commencement thereof.

Short title.

69. This Act may be called the Village Chaukidari Act, 1870.

SCHEDULE A.

(Referred to in section 27.)

Form of Distraining Warrant.

ACT 6 OF 1870.

VILLAGE *Chaukidari* FUND.

On behalf of the *panchayat* of (). Whereas the several persons named in the list at foot hereof have made default in payment to the said *panchayat* of the sums in the said list set opposite to their respective names, you are hereby authorized and required to levy by distress and sale of a sufficient portion of the movable property of the said defaulters the said several sums set opposite to their respective names together with the additional sums by way of penalty

^[1] This includes the present Province of Bihar and Orissa.

^[2] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[3] For a list of orders made under s. 68, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Schedules B and C.)

respectively, equal to the sums set forth. Dated
18 .

day of

(Sd.) R. B.,
Collecting member.

Name and description.	Amount.	When due.	Penalty.
B. G.	1-0	1 <i>Baisakh</i>	1-0
K. B.	0-2	1 „	0-2

[¹]SCHEDULE B.

(Referred to in sections 39 and 41.)

Offences to be reported and for which a chaukidar may arrest.

Murder, culpable homicide, rape (when the offender is not the husband of the woman raped), dacoity, robbery, theft, mischief by fire, house-breaking, counterfeiting coins, causing grievous hurt, riot, administering stupefying drugs, kidnapping, and all attempts and preparations to commit, and abetments of the said offences.

SCHEDULE C.

(Referred to in section 50.)

Form of Transferring Order.

District of

I,

Collector of

do by this order under my hand made in pursuance of Act 6 of 1870, passed by the Lieutenant-Governor of Bengal in Council, transfer to
, *zamindar* of , the *chaukidari*
chakaram lands of the village of , in the said
bounded and containing bighas cottahs; to
hold unto the said his heirs and assigns subject to the annual
assessment of rupees payable under the provisions of the said
Act to the *Chaukidari* Fund of the said village and also subject to all
contracts binding the said in respect of any lands, portion of
the said situated within the said village.

The day of 18 .

(Sd.) J. S.,

Collector of

[¹] This Schedule was substituted for the original Schedule B by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 19, in Vol. III of this Code.

(Schedule D.)

SCHEDULE D.

(Referred to in section 54.)

Form of Notice of Arrears of Assessment on Land.

Panchayat of

To A. B., Esq., *Collector of*

SIR,

I hereby notify to you that the sum of Rs. being for one year's assessment payable in respect of the *chaukidari chakaran* lands of this village transferred to the *zamindar* of became due on the day of and that the same is still unpaid, and that of is the person liable to pay such assessment.

The day of

(Sd.) E. F.,

Collecting Member of Panchayat.

BENGAL ACT 1 OF 1871.

(THE BENGAL VILLAGE CHAUKIDARI ACT, 1871.)^[1]

(25th January, 1871.)

An Act to amend the Village Chaukidari Act, 1870.^[2]

Whereas it is expedient to amend the provisions of the Village Preamble.
Ben. Act 6 of Chaukidari Act, 1870^[2]; It is enacted as follows:—
1870.

1. Nothing in the said Act shall be held to repeal the provisions of section 21, Regulation 20 of 1817^[3] in any village or union until a *chaukidar* shall have been appointed therein under the provisions of the said Act. Act not to apply till *chaukidar* appointed.

2. Whenever a *panchayat* shall have been appointed in any village, the Magistrate may direct that such *panchayat* shall, within one month after their appointment, make an assessment for the residue of the year according to the year current in the village, upon the persons liable to the payment of the *chaukidari* rate in such village, and shall enter the same in a list containing the particulars required to be set forth in the list mentioned in section 16 of the said Act. Panchayat in certain cases to make assessment within one month.

Such list shall, on its completion, be forthwith published in some conspicuous part of the said village.

3. Every assessment so made shall commence and take effect upon the expiration of fifteen days from the publication of such list. Commencement of assessment.

4. Every such assessment shall be deemed to be an assessment made in pursuance of the provisions of the said Act, and the amounts thereby assessed may be collected and enforced accordingly. Effect of assessment.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1870, p. 2316; and for Proceedings in Council, see *ibid*, Supplement, 1870, pp. 777, 790, 837; *ibid*, Supplement, 1871, p. 27.

LOCAL EXTENT.—This Act is to be read with, and as part of, the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870)—see s. 7, *post*, p. 130. Its local extent is therefore the same as that of the latter Act, as to which see footnote 1 on that Act, *ante*, p. 109.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the District of Manbhum and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division—see Vol. IV, Pt. III, but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

^[2] Printed *ante*, p. 109.

^[3] The Bengal Police Regulation, 1817.

(Secs. 5-7.)

Rate
payable
quarterly
instead of
monthly.

5. In section 21 of the said Act 6 of 1870,[¹] the word, “quarterly” shall be substituted for the word “monthly,” and in sections 21 and 26 the word “quarter” shall be substituted for the word “month” wherever such word occurs in the said sections; and the said sections shall be read and construed as if the words hereby directed to be substituted had been originally inserted in place of the words for which they are hereby respectively directed to be substituted.

6. (*New clause substituted in section 39 of Ben. Act 6 of 1870.)
Rep. by the Repealing and Amending Act, 1897 (5 of 1897).*)

Construction.

7. This Act shall be read with, and as part of, the said Act 6 of 1870.[¹]

[¹] *The Village Chaukidari Act, 1870.* It is printed, *ante*, p. 109.

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BENGAL ACT 2 OF 1871.

[THE BENGAL LAND-REVENUE SALES (AMENDMENT) ACT, 1871.][¹]

(25th January, 1871.)

An Act to amend the Procedure for the recovery of arrears of land revenue in respect of tenures not being estates.

Whereas it is expedient to amend the procedure for the recovery of Preamble.
arrears of land revenue in respect of tenures not being estates; It is
enacted as follows:—

Act 7 of 1868, passed by the Lieutenant-Governor of Bengal in Construction
Council, shall be read and construed as if in place of section 11 thereof of Act.
the following section were inserted and substituted:—

11. (Printed *ante*, p. 84.)

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1870, p. 2457; and for Proceedings in Council, see *ibid*, Supplement, 1870, pp. 777 and 836; *ibid*, Supplement, 1871, p. 30.

LOCAL EXTENT.—Since this Act has no local extent clause, and merely amends the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), it has the same local extent as that Act, and the Bengal Land-revenue Sales Act, 1859 (11 of 1859), printed in Vol. I of this Code.

The Act is in force in the Sonthal Parganas—see Vol. IV, Pt. VI; but its application is barred in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

BENGAL ACT 4 OF 1871.
(THE PURI LODGING-HOUSE ACT, 1871.)

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30. Clearing drains and cesspools.
31. Power to set apart tanks for domestic use.
32. Notice to drain and clear vegetation.
33. Power to drain tanks, etc.
34. Power to perform works of which notice is given.
35. Service of notices.
36. Indemnity clause.
37. Power to make by-laws.
38. By-laws to be confirmed by Lieutenant-Governor.
39. (*Repealed.*)
40. Short title.

SCHEDULE A.—(*Eastern Bengal*) APPLICATION FOR LICENSE.

SCHEDULE B.—(*Eastern Bengal*) LICENSE.

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BENGAL ACT 4 OF 1871.

(THE PURI LODGING-HOUSE ACT, 1871.)^[1]

(5th April, 1871.)

**An Act for the better sanitation of Puri * * *^[2] and
regulation of lodging-houses therein.**

Whereas it is expedient to make provision for the licensing and Preamble.
regulation of pilgrims' lodging-houses at Puri, and on the main lines
of road leading to Puri, and for the better sanitation of Puri * *^[2];

It is enacted as follows:—

1. The words and expressions following shall, in this Act, have and Interpret-
bear the meanings and construction hereby assigned to them, unless ation.
there be something in the subject or context repugnant to such meaning
or construction, that is to say:—

the word “lodger” shall mean ^[3]a pilgrim liable to pay hire for “Lodger.”
accommodation in any house; ^[4]and shall include a person who pays

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1871, p. 152, and for Proceedings in Council, see *ibid.*, Supplement, 1871, pp. 23, 30, 127, 150 and 165.

LOCAL EXTENT.—This Act extends *proprio vigore* only to (1) Puri and (2) main lines of road leading to Puri—see the preamble and s. 2. Power was given by section 39 to extend the Act to certain other places; but that power, it is understood, was never exercised, and the section has since been formally repealed.

Ben. Act 2 of 1879, s. 3, empowers the Local Government to extend Ben. Act 4 of 1871, or any part thereof, by notification, to any town or place to or through which people go on pilgrimage, and to the lines of road leading thereto. When so extended, certain portions of the Act of 1871 are subject to modification—see Ben. Act 2 of 1879, s. 3, *post*.

For a list of places to which Ben. Act 4 of 1871, as amended by Ben. Act 2 of 1879, has been extended under s. 3 of the latter Act, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

The Act applies to the Sonthal Parganas, see Vol. IV, Pt. VI; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—For Indian enactments in force in Bengal as to the carriage of pilgrims by sea, see—

(a) the Native Passenger Ships Act, 1887 (10 of 1887), in General Acts, 1887-97, Ed. 1909, p. 26;

(b) the Pilgrim Ships Act, 1895 (14 of 1895), in General Acts, 1887-97, Ed. 1909, p. 497, and

(c) the Protection of Muhammadan Pilgrims Act, 1896 (Ben. Act 1 of 1896), ss. 9 to 17, in Vol. III of this Code.

For references to enactments giving control over the spread of infectious disease, see head “Infectious disease” in the Index to the Indian Statutes, Ed. 1911, p. 357.

^[2] The words “and other towns in Orissa,” in the title and preamble, were repealed, in Western Bengal, by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 2, and are omitted.

^[3] The words “a pilgrim” in italics in s. 1 were substituted, in Western Bengal, for the words “an inmate” by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 3 (1), in Vol. III of this Code.

^[4] These words in italics in s. 1 were added, by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 3 (2), in Vol. III of this Code.

(Secs. 2-4.)

or delivers to his Panda, or to any other person on behalf of his Panda, money in a lump sum, or property, or both, in consideration for the provision of accommodation and bodily comforts by such Panda or other person in any place other than the place of residence of such Panda;

“Owner.” the word “owner” shall mean the person entitled to the immediate possession of any house;

“Lodging-house.” the expression “lodging-house” shall mean a house licensed under this Act for the reception of lodgers;

“Keeper of a lodging-house.” the expression “keeper of a lodging-house” shall mean the person to whom a license for the reception of lodgers in any house under this Act shall be granted;

“The Magistrate.” the expression “the Magistrate” shall mean the Magistrate of the district [1] of Puri or of any other district or part of a district to which this Act may be extended, or other officer in charge of the office of such Magistrate, or specially invested[2] with power under this Act;

“The Health Officer.” the expression “the Health Officer” shall mean the person whom the Lieutenant-Governor of Bengal[3] shall appoint under this Act.

Appointment of Health Officer. 2. The Lieutenant-Governor of Bengal[3] is hereby empowered to appoint[4] a Health Officer to control and direct the sanitation and conservancy of the town of Puri[5] and of the main lines of road leading thereto.

Power to Magistrate to grant license. 3. * * * [6]It shall be lawful for the Magistrate, upon the application of the owner of any house in the town of Puri[5] to grant to such applicant a license for the reception of lodgers in his said house, if the Magistrate be satisfied that such house is fit to be used as a lodging-house.

Form of application for license. 4. The application for such license as in the preceding section is mentioned shall be in writing, and shall be[7] *in such form as the*

[1] Now District Magistrate—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2), in General Acts, 1898-03, Ed. 1909, p. 40.

[2] For an order made under this power, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] Now the Lieutenant-Governor in Council of Bihar and Orissa—see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 3, and Sch. D, items 8 and 9, in Vol. I of this Code.

[4] For a list of appointments made under s. 2, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[5] In places to which this Act has been extended under the Puri Lodging-house (Extension) Act, 1879 (Ben. Act 2 of 1879), s. 3, the name of the place concerned is substituted for “Puri” in ss. 2 and 3—see Ben. Act 2 of 1879, s. 3, *post*, p. 273.

[6] Formal words in s. 3, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[7] These words in italics in s. 4 were substituted for the words “in the form set forth in Schedule A of this Act,” by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 4 (a), in Vol. III of this Code.

(Secs. 5-7.)

Lieutenant-Governor may, by notification, [1] prescribe in this behalf, and shall be subscribed and verified by the applicant at the foot or end thereof in the manner provided by law[2] for the verification of plaints.

The license for the reception of lodgers to be granted by the Magistrate under this Act shall be [3] *in such form as the Lieutenant-Governor may, by notification, [1] prescribe in this behalf.*

Form of license.

5. The Health Officer shall, when required by the Magistrate or the owner of any house, certify to the Magistrate the sanitary state and condition of such house, and the nature and extent of the accommodation which such house is capable of affording to lodgers.

Health Officer when required to report upon lodging-house.

6. No license for the reception of lodgers shall be granted under this Act by the Magistrate, unless the Health Officer shall certify in writing under his hand to the Magistrate that in his judgment the house, for the licensing of which for the reception of lodgers application shall have been made as aforesaid, is sufficiently ventilated, and has, within a reasonable distance from such house, a sufficient supply of water fit for human consumption, and also sufficient privy accommodation, and is otherwise fit for the reception of lodgers.

Restrictions on power of granting license.

The said Health Officer shall also certify to the Magistrate the largest number of lodgers which such house can, having regard to the number of persons permanently residing therein, accommodate with safety to the health of such lodgers; and no license under this Act shall be granted by the Magistrate for the reception in any house of any number of lodgers in excess of the number of lodgers which the Health Officer shall have so certified as aforesaid to be the largest number which such house could accommodate with safety to the health of such lodgers.

7. * * * [1] Every owner of any house in the town of Puri, [5] not licensed as a lodging-house under this Act, who shall suffer or permit any lodger to be an inmate of such house, shall be punished by a fine not exceeding [6] five rupees for every lodger for each [7] day or

Fine on lodging-house keeper not taking out license.

[1] For a notification issued under s. 4, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] See the Code of Civil Procedure (Act 5 of 1908), Sch. I, Order VI, rule 15, in General Acts, 1904-09, Ed. 1909, p. 223.

[3] These words in italics in s. 4 were substituted for the words "in the form set forth in Schedule B of this Act," by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 4 (b), in Vol. III of this Code.

[4] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[5] In places to which this Act has been extended under the Puri Lodging-house (Extension) Act, 1879 (Ben. Act 2 of 1879), s. 3, the name of the place concerned is substituted for "Puri" in s. 7—see Ben. Act 2 of 1879, s. 3, *post*, p. 273.

[6] This word "five" in s. 7 was substituted for the word "two," by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 5 (a), in Vol. III of this Code.

[7] The words "day or" in s. 7 were inserted by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 5 (b), in Vol. III of this Code.

(Secs. 8-10.)

night during any part of which such lodger shall be an inmate of such house.

Fee for
Health Offi-
cer's certi-
ficate, and
for license.

8. There shall be charged upon every certificate of the Health Officer, issued upon an application therefor by the owner of any house, a fee of one rupee; and upon every license^[1] *a fee shall be payable calculated upon the entire number of lodgers which is mentioned in the certificate, at such rate, not exceeding one rupee for each lodger, as the Lieutenant-Governor may, by notification, [2] direct.*

Duration of
license.

9. Every license under this Act shall, unless revoked or suspended, continue and be in force^[3] *till the thirty-first day of December of the year in which it is granted.*

Power to
inspect
lodging-
houses.

10. It shall be lawful for the Magistrate or the Health Officer, or for any other person whom the Magistrate shall by any writing thereunto authorize, at any * *^[4] time to enter into any lodging-house, and to inspect and examine the same and every part thereof, not being in the exclusive use and occupation of women who, according to the custom and manners of the country, ought not to be compelled to appear in public:

Provided always that if, in the judgment of the Magistrate, such reason shall exist as to necessitate an entry into, and inspection and examination of, such apartments so exclusively used and occupied by such women as aforesaid, it shall be lawful for the Magistrate, upon reasonable notice of such his intention being affixed to the house in which such women are residing, to enter into and inspect and examine, or to authorize under his hand any other person to enter into and inspect and examine, such apartments of such women as aforesaid.

[5] Provided, further, that no entry, inspection or examination shall be made between the hours of 9 P.M. and 6 A.M. except by—

(a) the Magistrate himself, or

(b) the Health Officer, if he is also the Civil Medical Officer of the district, or

[1] These words in italics in s. 8 were substituted for the words "a fee, calculated at the rate of eight annas for each person upon the entire number of lodgers mentioned in such license shall be payable," by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 6, in Vol. III of this Code.

[2] For a list of notifications issued under s. 8 for Bengal as constituted on the 31st March, 1912, see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

[3] These words in italics in s. 9 were substituted for the words "for twelve calendar months from the day of its date" by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 7, in Vol. III of this Code.

[4] The word "reasonable," in s. 10, was repealed by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 8 (1), and is omitted.

[5] This proviso was added to s. 10, by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 8 (2), in Vol. III of this Code.

(Secs. 11A-14.)

- (c) an officer, not below the rank of Sub-Deputy Magistrate or Sub-Deputy Collector, who is authorized in writing in this behalf by the Magistrate.

11. It shall be lawful for the Magistrate to exempt from inspection the house or portion of a house occupied by any lodger, so long as they shall be occupied by such lodger, or until further order by the Magistrate. Power to exempt lodging-house from inspection.

[¹]11A. Every person who is authorized in writing under section 10 to enter into, inspect and examine any lodging-house shall be deemed to be a public servant within the meaning of the Indian Penal Code.^[2] Persons authorized to inspect deemed public servants.

45 of 1860.

12. Every keeper of a lodging-house shall produce to the Magistrate, or any officer by the Magistrate authorized to demand the same, the license of such house, whenever he shall be thereunto required by the Magistrate or such officer. Keeper of lodging-house to produce license.

[³]12A. Every keeper of a lodging-house shall maintain a register, and shall record therein the name of the person whom he leaves actually in charge of the lodging-house during each period when such keeper is absent therefrom. Keeper of lodging-house to record name of person left in charge.

13. Every keeper of a lodging-house shall make a report, to the person in charge of the nearest police-station, of each birth, death, or grave accident, or serious sickness which may occur in the lodging-house of which he is keeper, forthwith after such birth, death or accident or sickness shall have occurred; Keeper of lodging-house to report accidents, deaths and sickness, and names of persons in lodging-house.

and shall also, every day, during such periods of the year as the Magistrate shall from time to time appoint, before noon, make a report in writing to the person in charge of such station, stating the number of persons who shall have been^[4] *lodgers* of such lodging-house during the preceding night, and distinguishing in such list males from females and adults from children.

[⁵]14. (*I*) Every keeper of a lodging-house shall *expose*, and keep *exposed*, on a conspicuous portion of the front of such house, a notice showing the number of the license and the number of lodgers which he is licensed to accommodate. Keeper of lodging-house to expose notice.

^[1] Section 11A was inserted by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 9, in Vol. III of this Code.

^[2] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

^[3] Section 12A was inserted by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 10, in Vol. III of this Code.

^[4] The word "*lodgers*" in italics in s. 13 was substituted for the word "*inmates*" by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 11, in Vol. III of this Code.

^[5] This section was substituted for the original s. 14 by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 12, in Vol. III of this Code.

(Secs. 15-17.)

(2) Such notice shall be plainly and legibly inscribed in the *Bengali*, Hindi and Uriya characters.

Report to be kept of inspection and examination of lodging-house.

15. Upon the inspection and examination of any lodging-house, the Magistrate or Health Officer or other person authorized as aforesaid to make such inspection and examination shall record in a register-book to be kept for that purpose a succinct report of the result of such inspection and examination.

Statement under Act to be true

16. Every person who shall make any application, statement or report, in pursuance of the provisions of this Act, shall be deemed to have been bound by express provision of law to state the truth therein.

Penalties.

17. ^1 Every keeper of a lodging-house

in which there shall be, at any time, a number of ^[2]*lodgers* in excess of the aggregate number of ^[2] *lodgers* resident in such house at the date of the application for the license thereof * * *,^[3] or a number of lodgers in excess of the number of lodgers mentioned in such license, or

who shall suffer or permit any person, other than a member of his family or a servant in his actual employ, to be^[4] *a lodger* in his house after the revocation or during the suspension of his license,

^[5]shall be liable to be punished by a fine not exceeding *five* rupees for *each lodger so found*.

^[6](2) ^[7]*Every keeper of a lodging-house*

who *refuses or neglects*, without reasonable cause, within one hour after demand, to produce to the Magistrate or other officer as aforesaid the license for his said lodging-house when he shall be thereunto required, or

^[1] This portion of section 17 was re-numbered section 17 (1), by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (1), in Vol. III of this Code.

^[2] The word "lodgers" in s. 17 was substituted for the word "inmates," by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (2), in Vol. III of this Code.

^[3] The words "and of the number of lodgers mentioned in such license" in s. 14, were repealed, by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (3), and are omitted.

^[4] The words "a lodger in" in s. 17 were substituted for the words "an inmate of" by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (2), in Vol. III of this Code.

^[5] This clause in italics in s. 17 (1) was added by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (4), in Vol. III of this Code.

^[6] This portion of s. 17 was re-numbered sub-section (2), by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (5) (a), in Vol. III of this Code.

^[7] These words in italics in s. 17 (2) were substituted for the words "or who shall refuse or neglect," by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (5) (a), in Vol. III of this Code.

(Secs. 18-21A.)

[¹]who fails, without reasonable cause, to maintain the register prescribed by section 12A., or to make any entry therein which is prescribed by that section, or

who shall omit, without like reasonable cause, to make such report as by section 13 of this Act he is required to make, or to expose or keep exposed the number of his license, and the number of lodgers he is licensed to accommodate, as hereinbefore is required,

shall be liable to be punished by a fine not exceeding fifty rupees for every such offence.

18. Whenever the keeper of any lodging-house shall not be actually in charge thereof, then the person who shall be actually in charge thereof shall, as well as the keeper thereof, be liable to the penalties hereby provided for any infraction of the provisions of this Act. Persons in charge of lodging-houses responsible.

19. All offences against this Act shall be heard and determined according to the provisions of Chapter XV of the Code of Criminal Procedure.^[2] Determination of offences.

25 of 1861.

20. It shall be lawful for the Magistrate to revoke or suspend any license granted under this Act to the keeper of any lodging-house who after the grant of such license, shall have been convicted of any offence against the provisions of this Act, or whose house shall have been certified by the Health Officer to have become unfit or unsafe for occupation as a lodging-house. Power to revoke or suspend licenses.

21. It shall be lawful for the Magistrate, when it shall be proved to him that any licensed lodging-house is unfit for the accommodation of the number of lodgers mentioned in the license, to reduce the number of lodgers mentioned in the license thereof to such number as may be able to obtain suitable accommodation in such house, and to enter in the license of such house such diminished number. Power to reduce number of lodgers for which license is granted.

[³]**21A.** Where, in cases of urgency, the Magistrate is satisfied that sufficient accommodation cannot be provided in the licensed lodging-houses for all the pilgrims visiting the town, he may grant temporary licenses on such terms as he may think fit, and may charge for any such Power to grant temporary licenses in cases of urgency.

[¹] These words and figures in italics in s. 17 (2) were inserted by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 13 (5) (b), in Vol. III of this Code.

[²] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872 (the Code of Criminal Procedure). S. 2 of, and Sch. V to, the latter Act directed that the reference in the text should be deemed to be made to "Chapter XVI and the provisions applicable to summons cases" in Act 10 of 1872. Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882. This latter Act has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to Chapters XVI, XVII and XX of that Code—see s. 3 (1) thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

[³] Section 21A was inserted by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 14, in Vol. III of this Code.

(Secs. 22-27.)

license such fee as he thinks fit, not exceeding the fee payable for a license under section 8.

Fees and
fines recover-
able under
Act to go to-
wards sani-
tary im-
provement.

[¹]22. All fines and fees under this Act shall be expended in the sanitary improvement of all or any of the towns or places in which this Act may be in force, or in the sanitary improvement of pilgrim halting-places or the roads leading to such towns or places, in such manner as the Lieutenant-Governor of Bengal[²] may from time to time direct.

Applications
to be in writ-
ing.

23. All applications to the Magistrate or Health Officer under this Act shall be made in writing.

Depositing
dirt, etc., in
highways
and sewers.

[³]24. Whoever

deposits, or permits his servants to deposit, any dust, dirt, dung, ashes or refuse, or filth of any kind, or any animal-matter, or any broken glass or earth-ware or other rubbish, in any public highway, except in such convenient spots, and in such manner, and at such hours as shall be fixed by the Magistrate with the assent of the Health Officer, or

throws or puts, or permits his servants to throw or put, any such substance into any public sewer or drain, or into any drain communicating therewith,

shall be liable to a fine not exceeding ten rupees.

Permitting
offensive
matter to run
into drains
or upon
highways.

[³]25. Whoever

causes or allows the water of any sink or sewer, or any other offensive liquid matter belonging to him or being on his land, to run, drain or be thrown or put upon any public highway, or

causes or allows any offensive matter from any sewer or privy to run, drain or be thrown into a surface-drain in any such highway,

shall be liable to a fine not exceeding ten rupees.

Notice to cut
trees.

[³]26. The Magistrate may give notice to the owner or to the occupier of any land to cut and trim any hedges or trees which overhang any public highway so as to obstruct the passage, or to interfere with the free circulation of air.

Penalty on
occupier of
house not
removing
filth.

[⁴]27. Whoever, being the occupier of a house in or near any public highway,

[¹] This section was substituted for the original s. 22 by the Puri Lodging-house (Extension) Act, 1879 (Ben. Act 2 of 1879), s. 2, *post*.

[²] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[³] Sections 24 to 34 ceased to be in force in every municipality under the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876)—see s. 2 of that Act. Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), but see ss. 2, 3 and 8 of the latter Act, *post*.

[⁴] See footnote [³] on s. 26, *ante*.

(Secs. 28-31.)

keeps or allows to be kept for more than twenty-four hours, other wise than in some proper receptacle, any dirt, dung, bones, ashes, night soil or filth or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or

suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same, shall be liable to a fine not exceeding fifty rupees.

[¹]28. Whoever, being the owner or keeper of any cattle, sheep or pigs, Keeping cattle near highways.

suffers the stall, pen or place in which they are kept, in or near any public highway, to be in a filthy or noxious state, or

neglects to employ proper means to remove the filth therefrom,

shall be liable to a fine not exceeding twenty rupees, and to a fine not exceeding three rupees for every day after conviction for such offence during which the offence is continued.

[¹]29. The Magistrate may license such necessities for public accommodation as he from time to time may think proper; and whoever shall keep any public necessary without such license, or, having a license for a public necessary, shall suffer the same to be in a filthy or noxious state, or shall neglect to employ proper means for cleansing the same, shall be liable to a fine not exceeding fifty rupees, and such license may be withdrawn. Power to license public necessities.

[¹]30. Whoever, being the owner or occupier of any private drain, privy or cesspool, shall neglect or refuse, after warning from the Health Officer, to keep the same in a proper state, shall be liable to a fine not exceeding fifty rupees. Clearing drains and cesspools.

[¹]31. It shall be lawful for the Magistrate, with the assent of the Health Officer, to appropriate to the domestic use of the inhabitants of Puri, or of any other towns to which this Act may be extended, any tank not being a private tank; Power to set apart tanks for domestic use.

and whoever shall bathe in any tank so appropriated to the domestic use of the inhabitants of the place, or

shall wash or cause to be washed therein any animal, or any wool, cloth or wearing-apparel, or any utensils for cooking or other purposes, or leather or the skin of any animal, or any foul or offensive thing, or

shall put or cause to enter therein any animal, or any gravel, stone, dirt or rubbish, or any dirt, filth or other noxious thing, or

[¹] See footnote [²] on s. 26, p. 142, *ante*.

(Secs. 32-35.)

shall cause or suffer to run, drain or be brought thereunto the water of any sink, sewer, drain or any other unwholesome or offensive liquid, or

shall do anything whatsoever whereby the water in any such tank shall be in any degree fouled or corrupted,

shall be liable to a fine not exceeding fifty rupees.

Notice to
drain and
clear vegeta-
tion.

[¹]32. Whenever any lands or premises, being private property or within any private enclosure, appear to the Health Officer to be, by reason of thick or noxious vegetation or want of drainage, in a state injurious to health or offensive to the neighbourhood, it shall be lawful for the Magistrate to require, by notice in writing, the owner or occupier of the premises to clear and remove such vegetation, or drain such premises.

Power to
drain tanks,
etc.

[¹]33. The Magistrate may from time to time, as he may see fit, drain off into any sewers, and cleanse and fill up or otherwise abate, any stagnant pool, ditch, tank, pond or other receptacle of water which shall appear to the Health Officer to be useless or unnecessary, or likely to prove injurious to the health of the inhabitants, whether the same be or be not within any private enclosure or be or be not the private property of any person.

Power to
perform
works of
which notice
is given.

[¹]34. In case any person to whom any notice, warning or order under the provisions of section 26, 30 or 32 shall be given shall, without sufficient reason, for eight clear days after service upon him of such notice or order, neglect or refuse to comply therewith, or shall not proceed with due diligence in the completion of the works thereby required,

it shall be lawful for the Magistrate to cause to be performed the works in or by such notice required to be performed, and for that purpose to enter into or upon, and to cause workmen and servants to enter into and upon, lands belonging to, or in the occupation of, such person, and to do all things needful or useful to the performance of such works;

and the Magistrate shall make an order under his hand certifying the expense incurred in or about the performance of such works and ordering the payment of such amount by the owner or by the occupier of the lands on which such works may have been performed;

and such amount may be recovered from the person named therein as if it had been a fine for an offence against any of the provisions of this Act.

Service of
notices.

35. Every notice, warning, order or summons, under any of the preceding sections of this Act may be served personally upon the person

[¹] See footnote [²] on s. 26, p. 142, *ante*.

(Secs. 36-37.)

to whom the same is addressed, or may be served by leaving the same at his usual or last known place of abode with some adult male member or servant of his family, or, if it cannot be so served, may be served by being put up on some conspicuous part of such place of abode.

If such notice, warning, order or summons relates to any house, building or land, and the place of abode of the person whom it is intended to affect by such notice, warning, order or summons is unknown, or is not within the town in which such house, building or land is situate, the same shall be deemed to be duly served if put up in some conspicuous part of the house, building or land to which the same relates.

36. No action shall be brought against the Magistrate, nor against the Health Officer, nor against any of his or their officers, nor against any person acting under his or their direction, for anything done or professing or purporting to be done under this Act, Indemnity-clause.

until the expiration of [¹]*two months* next after notice in writing shall have been delivered or left at the office of the Magistrate or at the place of abode of such person, explicitly stating the cause of action, and the name and place of abode of the intended plaintiff;

and, unless such notice be proved, the Court shall find for the defendant;*

and every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards;

and, if any person to whom any such notice of action is given shall, before action brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

37. It shall be lawful for the Magistrate, with the assent of the Health Officer, and the Civil Surgeon of the district if he be not the Health Officer, to make by-laws,^[2] and to repeal, alter and amend the same, subject to the confirmation hereinafter mentioned, Power to make by-laws.

for the management of all matters connected with the conservancy of the town of Puri or of any other town to which this Act may be extended, and

for regulating the encampments, lodging and halting places of pilgrims on their journey to or from Puri or such other town as aforesaid, and

[¹] These words in italics in s. 36 were substituted for the words "one month" by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 15, in Vol. III of this Code.

[²] For a list of by-laws made under s. 37, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 38-40.)

for preventing the spread of epidemics amongst such pilgrims while at Puri or such other town as aforesaid, or on the journey thereto or therefrom, and

to affix fines as penalties for the infringement of such by-laws :

Provided that no by-law shall be repugnant to any law in force, and that no fine for any one infringement of a by-law shall exceed twenty rupees, and that in case of a continuing infringement no fine shall exceed five rupees for every day after notice from the Magistrate of such infringement.

By-laws to
be confirmed
by Lieuten-
ant-Gover-
nor.

38. No by-law or alteration of a by-law shall have effect until the same shall have been approved and confirmed by the Lieutenant-Governor of Bengal^[1] and shall have been published for such length of time and in such manner as the Lieutenant-Governor of Bengal^[1] shall order.

39. (*Provision for extending Act to Bhubaneshwar, Jaipore, any towns or villages in Orissa used as pilgrims-stages, or any villages in Orissa on the line of road habitually traversed by pilgrims.*) Rep. by the Amending Act, 1903 (1 of 1903).

Short title.

40. This Act may be called the Puri Lodging-house Act, 1871.

[¹] Now the Lieutenant-Governor in Council of Bihar and Orissa.

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BENGAL ACT 1 OF 1873.

(THE BENGAL SALT ACT, 1873.)^[1]

(12th March, 1873.)

An Act to amend the Salt Act, 1864.^[2]

Whereas by the Salt Act, 1864, being Bengal Act 7 of 1864,^[2] section 3, it is enacted that the word “Magistrate” means any person exercising the full powers of a Magistrate under the Code of Criminal Procedure, Act 25 of 1861; and whereas the said Act 25 of 1861 has been repealed by the Code of Criminal Procedure, Act 10 of 1872,^[3] by which later enactment new rules have been enacted, assigning the several powers of Magistrate of the first, second and third classes;

And whereas reference is made in the Salt Act, 1864,^[2] to Act 13 of 1856 (*for regulating the Police of the Town of Calcutta, etc.*) and Act 48 of 1860 (*to amend Act 13 of 1856*), which enactments have been repealed, so far as they relate to the town of Calcutta, by the Calcutta Police Act, 1866, being Bengal Act 4 of 1866:

It is hereby enacted as follows:—

Ben. Act 7 of 1864. 1864. 10 of 1872.	1. All the powers which, under the provisions of the Salt Act, ^{Powers of} ^{Magistrate} ^{under Salt} ^{Act, 1864.} may be exercised by a Magistrate, may be exercised by a Magistrate of the first or second class, subject to the provisions of section 20 of the Code of Criminal Procedure. ^[4]
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^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Proceedings in Council, see Calcutta Gazette, Supplement, 1873, pp. 68, 114, 196 and 239.

LOCAL EXTENT.—Since this Act merely amends the Salt Act, 1864 (Ben. Act 7 of 1864), it must be taken to have been passed, like the latter Act, for the whole of the former Province of Bengal.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Pt. III, but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

^[2] Printed, *ante*.

^[3] Act 10 of 1872 was repealed and re-enacted by the Code of Criminal Procedure, 1882 (10 of 1882), which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), printed in General Acts, 1898-1903, Ed. 1909, p. 38.

^[4] Act 10 of 1872 was repealed and re-enacted by the Code of Criminal Procedure, 1882 (10 of 1882). The latter Act has again been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and the reference in the text should now be taken to be made to the corresponding provisions of the latter Act—see s. 3 (1) thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 2-3.)

Trial of **2.** All offences punishable under the provisions of the Salt Act, Ben. Act 7 of
offences under 1864^[1] may be inquired into and tried by a Magistrate of the first or ^{1864.}
said Act. second class.

References in **3.** All references made to the said Act 13 of 1856 and the said Act Ben. Act 4 of
said Act to 48 of 1860, in the Salt Act, 1864,^[1] shall be taken to be made to the ^{1866.}
Calcutta Calcutta Police Act, 1866.^[2]
Police Act.

^[1] Printed, *ante*, p. 21.

^[2] Printed in the Bengal Code (1913-15), Vol. II.

BENGAL ACT 4 OF 1873.

(THE BENGAL BIRTHS AND DEATHS REGISTRATION ACT, 1873.)

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BENGAL ACT 4 OF 1873.

(THE BENGAL BIRTHS AND DEATHS REGISTRATION ACT, 1873.)^[1]

(2nd July, 1873.)

An Act for Registering Births and Deaths.

Whereas it is expedient to provide the means for a complete register of births and deaths; It is hereby enacted as follows:—

1. The Lieutenant-Governor may at any time, by a notification^[2] published in the Calcutta Gazette, direct that all births and deaths, or all births, or all deaths, occurring within the limits of any area after a certain date to be named in such notification shall be registered, and for that purpose may define the limits of such area.

Power to direct registration of births and deaths and define area.

From and after such date this Act shall apply to the whole of the area so defined.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1873, Pt. IV, p. 370; and for Proceedings in Council, see *ibid*, Supplement, 1873, pp. 538, 562 and 691.

LOCAL EXTENT.—Since this Act contains no local extent clause, it must be taken to have been intended to extend to the whole of the former Province of Bengal; but it applies only to areas specially notified under s. 1.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan and the estate of Porahat in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Pt. III.

It extends to the Sonthal Parganas—see Vol. IV, Pt. VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—As to the Registration of births and deaths, under the present Act, in Provincial Municipalities, see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), Pt. XI, *post*, p. 611.

As to the registration of births and deaths in the Calcutta Municipality, see the Calcutta Municipal Act, 1899, Ch. XXXVIII, in Vol. III of the Bengal Code (1913-15).

As to the registration of births and deaths under the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), see ss. 72 and 114 of that Act, *post*, pp. 579 and 693.

As to reports by village *chaukidars* of births and deaths, see the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870), s. 39, cl. 7th, *ante*, p. 118.

For power to make rules as to the registration of births and deaths in Cantonments, see the Cantonments Act, 1910 (15 of 1910), s. 24 (26).

As to the voluntary registration of births and deaths, see the Births, Deaths and Marriages Registration Act, 1886 (6 of 1886), in General Acts, 1879-86, Ed 1909, p. 566.

As to the transmission to the Registrar-General of Births and Deaths in England of registers of, or documents showing, births and deaths of officers and soldiers and their families abroad, see the Registration of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict., c. 8), in the Collection of Statutes relating to India, Vol. I, Ed. 1913, p. 530.

As to the duties of Registrars of Births in connection with the vaccination of children, see the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), ss. 18 to 24, *post*, pp. 322 and 323.

^[2] For a list of notifications issued under section 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 2-6.)

Magistrate may divide area into district, and may appoint registrars.

2. The Magistrate of the district^[1] may, for the purpose of such registration, divide any such area into such and so many districts as he may think fit, and may appoint one or more persons to be registrars of births or of deaths, or of births and deaths, within such district, and may at any time for sufficient reason dismiss any such registrar, and may fill up any vacancy in the office of registrar.

Magistrate to publish list of registrars.

The Magistrate shall cause to be published a list containing the name and place of office of every registrar in the area, and specifying the hours of the day during which such registrar shall attend at his office for the purpose of registration.

Every registrar to have an office within his district.

3. Every registrar shall have an office within the district of which he is appointed registrar, and shall cause his name, with the addition of registrar of births (or of deaths, or of births and deaths according to his appointment) for the district for which he is so appointed, and notice of the hours during which he will attend for the purpose of registration, to be affixed in some conspicuous place on or near the outer door of his office.

Commissioners to have register-books prepared and numbered.

4. The Magistrate shall cause to be prepared a sufficient number of register-books for making entries of all births or deaths or both, according to such forms as the Lieutenant-Governor may from time to time sanction; and the pages of such books shall be numbered progressively from the beginning to the end; and every place of entry shall be also numbered progressively from the beginning to the end of the book, and every entry shall be divided from the following entry by a line.

Registrar to inform himself of, and register, births and deaths.

5. Every registrar shall inform himself carefully of every birth, or of every death, or of both, according to his appointment, which shall happen in his district, and shall register, as soon as conveniently may be after the event, without fee or reward, the particulars required to be registered, according to the forms mentioned in the last preceding section, touching every such birth or every such death, as the case may be which shall not have been already registered.

Chaukidar to obtain particulars and to report to registrar.

6. Every *chaukidar* or other village-watchman in any area to which this Act shall apply, or, where there is no *chaukidar* or other village-watchman, such person as the Magistrate may appoint, shall be required to report every birth or death occurring within his beat to such registrar and at such periods as the Magistrate may direct.

He shall obtain in writing, if possible, and if it is impossible for him to obtain in writing he shall obtain verbally, from any person who is bound to give information of the birth or death all particulars which

^[1] Now District Magistrate—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2), in General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 7-8.)

are required to be known and registered, and he shall report such particulars to the registrar.

Any *chaukidar* or other village-watchman or other person so appointed who wilfully or negligently refuses or omits to produce such writing, if any, or to report such birth or death, shall be punishable at the discretion of the Magistrate with fine which may extend to two rupees. Penalty for neglect.

7. The father or mother of every child born within such area, or in case of the death, illness, absence or inability of the father and mother, the midwife assisting at the birth of such child, shall, within eight days next after the day of every such birth, give information, either personally or in writing, to the registrar of the district, or by means of the *chaukidar* or other village-watchman or other person as provided in the last preceding section, according to the best of his or her knowledge and belief, of the several particulars hereby required to be known and registered touching the birth of such child. Persons bound to give information of birth.

Any person who refuses or neglects to give any information which it is his duty to give under this section, shall be punishable at the discretion of the Magistrate with fine which may extend to five rupees: Penalty for neglect.

Provided that not more than one person shall be punishable at the discretion of the Magistrate for such refusal or neglect to give information.

8. The nearest male relative of the deceased present at the death, or in attendance during the last illness of any person dying, within such area, or, in the absence of any such relative, the occupier of the house, or, if the occupier be the person who shall have died, some male inmate of the house in which such death shall have happened, shall, within eight days next after the day of such death, give information either personally or in writing to the registrar of the district,^[1] or by means of the *chaukidar* or other village-watchman or other person as provided in section 6, according to the best of his knowledge and belief, of the several particulars hereby required to be known and registered touching the death of such person: Persons bound to give information of death.

Provided that no person shall be bound to give the name of any female relative.

Any person who refuses or neglects to give any information, which it is his duty to give under this section, shall be punishable at the discretion of the Magistrate with fine which may extend to five rupees: Penalty for neglect.

[1] Or any sub-registrar appointed for a burning-*ghât* or burial-ground—see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), s. 348, *post*, p. 611.

As to duty of medical officer in charge of hospital to give notice of death, see *ib.*, s. 349, *post*, p. 611.

(Secs. 9-12.)

Provided that not more than one person shall be punishable for such refusal or neglect to give information.

Penalty for registrar refusing to register.

9. Any registrar^[1] who refuses or neglects to register any birth or death occurring within his district, which he is bound to register, within a reasonable time after he shall have been duly informed thereof, or demands or accepts any fee or reward or other gratification as a consideration for making such registry, shall be punishable at the discretion of the Magistrate with fine which may extend to fifty rupees for each such refusal or neglect.

Penalty for wilfully giving false information.

10. Whoever wilfully makes or causes to be made, for the purpose of being inserted in any register of births or deaths, any false statement touching any of the particulars required to be known and registered, shall be punishable at the discretion of the Magistrate with a fine not exceeding fifty rupees.

Municipality under Ben. Act 3 of 1864 may arrange for keeping register of births or deaths or both.

11. In any place to which the District Municipal Improvement Ben. Act 3 of 1864. Act^[2] shall have been extended, the Municipal Commissioners may if at a meeting specially convened for considering such question they shall so determine arrange for keeping a register of all births or of all deaths or of all births and deaths, occurring within the municipality.

On and after a date to be fixed at such meeting, the Commissioners shall in such case be authorized to provide out of the municipal fund for the employment of a sufficient number of registrars, and for the expenditure necessary for the maintenance of such registers, and shall exercise all the powers of a Magistrate under this Act; and all the provisions of this Act shall be deemed to apply to such place.

Magistrate may depute subordinate Magistrate to discharge his functions.

12. The Magistrate of a district^[3] may depute any subordinate Magistrate to exercise the powers and to perform the duties vested in the Magistrate by this Act within such district or any part thereof.

[¹] Or any sub-registrar appointed for a burning-*ghât* or burial-ground—see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), s. 348, *post*, p. 611.

[²] Ben. Act 3 of 1864 was repealed by Ben. Act 5 of 1876, which again has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), and this reference should now be taken to the latter Act—see s. 2 thereof, *post*.

[³] Now District Magistrate—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2) in General Acts, 1898-1903, Ed. 1909, p. 40.

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BENGAL ACT 6 OF 1873.

(THE BENGAL EMBANKMENT ACT, 1873.)^[1]

**[Sections 12, 13, 21 (proviso) and 26 to 29, and
Schedules B to E.]**

(24th December, 1873.)

12. Whenever any land, or earth from any land, the property of any person, is required for the purposes of any works commenced in pursuance of the provisions of [the last preceding section],^[2] or for the purposes of [section 18] ^[3] in cases where the Collector shall be of opinion that proceedings for the acquisition of such land according to the provisions hereinafter contained, in [section 25]^[4] would cause delay as aforesaid, the Collector shall cause a proclamation to be issued in form in Schedule B annexed to this Act, giving notice thereof at convenient places in the locality in which such land is situated, and he may at the same time take possession of the same for the said purposes.

Power to
take possession
of land.

13. The Collector shall ascertain and record the nature and estimated value of the crops and trees (if any) standing on such land, and shall offer adequate compensation to the person interested.

Compensation
for
standing
crops and
trees.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1871, p. 73; for Report of Select Committee, *see* *ibid*, 1873, Pt. IV, p. 257; and for Proceedings in Council, *see* *ibid*, 1870, Supplement, pp. 790, 829 and 835; *ibid*, 1871, Supplement, pp. 25, 265, 353 and 797; *ibid*, 1873, Supplement, pp. 68, 113, 197, 248, 375, 382, 632, 1265, 1300 and 1588.

LOCAL EXTENT.—This Act was declared by s. 1 to extend to the whole of the former Province of Bengal except Orissa and the Sundarbans.

It was further declared by notification No. 1394, dated 21st October 1881, issued under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, *see* Vol. IV, Pt. III.

The whole of the Act, except ss. 12, 13, 21 (proviso) and 26 to 29 and Schedules B to E, has since been repealed by the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), *post*, p. 459.

The application of the Act is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

The sections here printed are in force in the whole of the present Province of Bihar and Orissa except the Orissa Division, the Angul District and the Sonthal Parganas.

RESTRICTION ON APPLICATION.—Nothing in this Act applies to any canal or flood-embankment as defined in the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876)—*see* Ben. Act 3 of 1876, s. 4, *post*, p. 203.

^[2] This reference is now to be read as a reference to s. 25 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—*see* that Act, s. 2 and Sch. II, *post*.

^[3] This reference is now to be read as a reference to s. 30 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—*see* *post*.

^[4] This reference is now to be read as a reference to s. 37 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—*see* *post*.

(Secs. 21-29.)

If such offer is not accepted, the value of such crops and trees shall be allowed for in awarding compensation for the land under the provisions of section 29.

21 (proviso). Provided always that, in case the Collector be of opinion that the delay required by [such proceedings]^[1] is likely to be attended with grave and imminent danger to life or property, it shall be lawful for him forthwith to cause such trees, houses, huts or buildings to be removed, and in such case the compensation due therefor shall be ascertained and paid in the manner hereinafter provided.

When land
taken, pro-
clamation to
be published.

26. Whenever any land shall have been taken or used under the provisions of [Part III]^[2] the Collector shall cause a proclamation^[3] to be issued in form in Schedule C annexed to this Act at convenient places on or near the land so taken, stating that Government has taken possession of the land, and that claims to compensation for all interests in such land shall be made to him.

Thereupon the land shall vest absolutely in the Government free from all incumbrances, subject, however, to the claims for compensation to be ascertained in manner as in [this Part]^[4] is provided.

Contents of
proclamation.

27. Such proclamation shall state the particulars of the land so taken, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than 15 days after the date of issuing the proclamation), and to state the nature of their respective interests in the land, and the amount and particulars of their claims to compensation for such interest.

Further
notice
to be served
on certain
parties.

28. The Collector shall serve notice^[5] to the same effect on the occupier (if any) of such land, and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested, as reside, or have agents authorized to receive service on their behalf, within the revenue-district in which the land is situate.

Proceedings
after notice.

29. After service of such notice proceedings shall be had and taken to determine the amount of compensation to be payable in respect of such land, in accordance with the provisions of the Land Acquisition Act, 10

[¹] This reference to "such proceedings" is now to be read as a reference to s. 19 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—see that Act, s. 2 and Sch. II, *post*.

[²] This reference is now to be read as a reference to Part III of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—see that Act, s. 2 and Sch. II, *post*.

[³] As to the mode of publishing proclamations mentioned in s. 26, and serving notices mentioned in s. 28, see ss. 2, 80 and 81 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), *post*.

[⁴] This reference is now to be read as a reference to Part V of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882)—see that Act, s. 2 and Sch. II, *post*.

(Schedules B and C.)

of 1870, or any other law^[1] for the time being in force for the acquisition of land for public purposes.

SCHEDULE B.

(Referred to in section 12.)

Notice is hereby given that, under the provisions of section 11^[2] of the Bengal Embankment Act, 1873, the land hereunder specified has been taken up, and notice thereof has been given to the Collector of

1	2	3
<i>Pargana</i> in which land is situated.	Name of village in which land is situated.	Approximate boundaries and area of land.

The day of

A. B.,
Collector of

SCHEDULE C.

(Referred to in section 26.)

All persons interested are required to take notice that under the provisions of section 11^[3] of the Bengal Embankment Act, 1873, the Collector of has taken possession on account of the Government of (*here state particulars of the land taken,*) and that claims to compensation for all interests in such land must be made to the Collector. All persons having any such claims are therefore required to appear personally or by agent on day of at , and to state the nature of their respective interests in such land and the amount and particulars of their claims to compensation for such interests.

The day of

A.B.,
Collector of

^[1] See now the Land Acquisition Act, 1894 (1 of 1894)—printed in General Acts, 1887-97, Ed. 1909, p. 363, which repeals and re-enacts Act 10 of 1870.

^[2] Section 11 of this Act was repealed by the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 2, printed, *post*.

^[3] Section 11 of this Act was repealed by the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 2, printed, *post*.

(Schedules D and E.)

SCHEDULE D.

(Referred to in sections 34, 35 and 40.)^[1]

For Embankments in the Province of Bihar and Orissa, *see* Bihar and Orissa Statutory Rules and Orders.

SCHEDULE E.

(Referred to in sections 36 and 44.)^[2]

<i>Pargana.</i>	District.	Amount of contribution.		
		Rs.	A.	P.
Fatehsinha	Murshidabad	1,706	10	8
Rokanpur	Ditto	1,466	2	0

^[1] Sections 34, 35 and 40 were repealed by the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 2, printed, *post*.

^[2] Sections 36 and 44 of this Act were repealed by the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 2, printed, *post*. But sections 44 and 54 of the latter Act contain provisions as to this Schedule.

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BENGAL ACT 5 OF 1875.
(THE BENGAL SURVEY ACT, 1875.)

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BENGAL ACT 5 OF 1875.

(THE BENGAL SURVEY ACT, 1875.)^[1]

(6th October, 1875.)

An Act to provide for the survey and demarcation of land.

Whereas it is expedient, with a view to the definition and identification of lands, the better security of landed property and the prevention of encroachments and disputes, to provide for the survey of lands and for the establishment and maintenance of marks to distinguish boundaries; It is hereby enacted as follows:—

Preamble

PART I.

PRELIMINARY.

1. This Act may be called the Bengal Survey Act, 1875.

Short title.

(Commencement.) *Rep. by the Amending Act, 1903 (1 of 1903).*

It extends to the territories for the time being subject to the Lieutenant-Governor of Bengal.^[2]

Local extent.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1875, Pt. IV, p. 41; for Report of Select Committee, see *ibid.*, p. 305; for further Report of Select Committee, see *ibid.*, p. 461; and for Proceedings in Council, see *ibid.*, 1875, Supplement, pp. 14, 350, 929, 987.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see s. 1; but there is now a separate Act for Calcutta, which is also applicable to Provincial Municipalities—see the Calcutta Survey Act, 1887 (Ben. Act 1 of 1887), *post*, p. 721.

The Act has been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3 to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Pt. III.

It is in force in the following deregulationed tracts in Bihar and Orissa, namely:—

the District of Angul—see Vol. IV, Pt. VI.

the Sonthal Parganas—see Vol. IV, Pt. VI.

EXERCISE OF POWERS.—For power to confer on Revenue-officers any power, exercisable by any officer under the present Act, see the Bengal Tenancy Act, 1885 (8 of 1885), s. 189 (b) (in Vol. I); the Chota Nagpur Tenancy Act, 1908 (Ben. Act 6 of 1908), s. 265 (in Vol. III); and the Bihar Tenancy Act, 1913 (Bihar and Orissa Act 2 of 1913), s. 245 (in Vol. III).

Deputy Collectors making a partition under the Estates Partition Act, 1897 (Ben. Act 5 of 1897), have the powers of a Survey Officer under the present Act—see s. 44 of the former Act, in Vol. III of this Code.

BOUNDARY-MARKS.—As to the application of ss. 19, 20, 29 and 52 to 57 of the present Act to boundary-marks erected under the Estates Partition Act, 1897 (Ben. Act 5 of 1897), see s. 96 (2) of the latter Act, in Vol. III of this Code.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Sec. 2.)

2. In this Act, unless there be something repugnant in the subject or context,—
- Interpretation-clause. or context,—
- “Collector.” “Collector” means every Collector of a district, and includes every officer either generally or specially vested with the powers of a Collector for the purposes of this Act:
- “Deputy Collector.” “Deputy Collector” includes any Deputy Collector to whom the Collector or Superintendent of Survey may delegate any of his functions under this Act:
- “Estate.” “estate” means—
- any land which is entered on the revenue-roll as separately assessed with the public revenue;
 - any land acquired from the Government under one title, which is liable to pay land-revenue at any future time;
 - any *char* or island thrown up in a navigable river or in the sea which under the laws in force is at the disposal of the Government;
 - any land which is entered on the Collector’s registers as a separate holding, free in perpetuity from liability to pay land-revenue;
 - any land gained by alluvion or by dereliction of a river or of the sea to any estate as here defined, which, under the laws in force, is considered an increment to the tenure to which such land has accreted, shall be deemed a part of such estate:
- “*Mauza*.” “*mauza*” includes every village, hamlet, *tola* and similar subdivision of an estate, *pargana* or village by whatever name such subdivision may be known:
- “Occupant.” “occupant” includes every *zamindar*, tenure-holder, farmer and other person entitled to receive rents in respect of land, or holding land on a claim that he is so entitled, and every *raiyyat* in occupation of land:
- “Section.” “section” means a section of this Act:
- “Survey.” “survey” includes identification of boundaries, and all other operations antecedent to and connected with survey:
- “Tenure.” “tenure” includes all permanent interests in land, with the exception of estates as above defined, and with the exception of those of *raiyyats* having a right of occupancy only; it also includes all *ghátwáli* holdings:
- “Tenure-holder.” “tenure-holder” means all or any of the holders of a tenure:
- “*Zamindar*.” “*zamindar*” means all or any of the holders of an estate.

(Secs. 3-5.)

PART II.

OF THE SURVEY.

3. The Lieutenant-Governor may, whenever he shall think fit, order that a survey shall be made of the land situated in any district or in any part of a district or in any specified tract of country, and that the boundaries of estates, tenures, *manuzas* or fields be demarcated on the lands so to be surveyed:

Lieutenant-Governor may order survey.

Provided that, in any district of which any survey may have been completed and approved by the Government, it shall not be lawful for the Lieutenant-Governor to order a new survey of lands on the banks of rivers or on the sea-shore to be made for the purposes described in Act 9 of 1847^[1] (*an Act regarding the assessment of land gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bihar and Orissa*), until ten years shall have expired from the completion and approval of any such previous survey.

4. For the purpose of carrying out any survey directed to be made under the last preceding section, or for any or all of the purposes of this Act,

Lieutenant-Governor may appoint Superintendent of Survey.

the Lieutenant-Governor may appoint a Superintendent of Survey, who may exercise all or any of the powers of a Collector under this Act;

and may appoint one or more Assistant Superintendents and Deputy Collectors, who shall exercise all the powers of a Collector in respect to such matters under this Act as may be delegated to such Assistant Superintendents or Deputy Collectors respectively by the Collector or Superintendent of Survey, and not otherwise:

Provided that, notwithstanding the appointment of a Superintendent of Survey for any tract of country, it shall be competent to the Board of Revenue to direct that the Collector shall perform any duties under the Act within the said tract.

5. Before entering on any lands for the purpose of a survey the Collector shall cause to be published a proclamation addressed to the occupants of the lands which are about to be surveyed and of the conterminous lands, and to all persons employed on or connected with the management of, or otherwise interested in, such lands, calling upon them to attend, either personally or by agent, before the Collector or any officer authorized by the Collector in that behalf, at such places and

Collector to publish proclamation before entering on lands.

[¹] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code.

(Secs. 6-10.)

at such times as shall be stated in such proclamation, during the demarcation and survey of the land, for the purpose of pointing out the boundaries and of rendering such aid as may be necessary in setting up or repairing such boundary-marks as may be required, and of affording such assistance and information as may be needed for the purposes of this Act.

Such proclamation shall be published by posting a copy thereof—

at the Court of the Judge and at the office of the Collector of every district within which any portion of the lands about to be surveyed may be known to be situated;

at every sub-divisional office, police-station, *Munsif's* Court and sub-registrar's office within the jurisdiction of which any portion of the land about to be surveyed may be known to be situated;

at one or more *mâl-cutcherries* on each estate;

and at such other place or places as to the Collector may seem fit.

Collector
may enter
upon land.

6. After issue of a proclamation as aforesaid, the Collector and any persons acting under his authority may enter upon such lands, and do all things and make all inquiries necessary for effecting the survey and demarcation of the boundaries thereof.

Collection
may serve
special
notice.

7. The Collector may also, by a special notice, require any such person to attend before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than fifteen days after the service of the notice, at any places, for any of the purposes aforesaid; and every person on whom such special notice may be served shall be legally bound to attend as required by the notice, and to do any of the things mentioned in section 5, and to give any information which may be required, so far as he may be able to give it.

Collector to
pay price of
materials or
labour supplied.

8. When any materials or labour shall have been supplied for any of the purposes mentioned in section 5, the Collector or other officer making a requisition under that section shall forthwith cause the price of such materials or labour to be paid to the person by whom the same were supplied.

Collector may
require occupants to
clear
boundary-
lines.

9. The Collector or other survey-officer authorized by the Collector in that behalf may, by a special notice, require any occupant to clear any boundary or other line which it may be necessary to clear for the purposes of the survey, by cutting down and removing any trees, jungle, fences or standing crops.

Compensation.

10. If any demand for compensation be made in respect of the clearance of any line in accordance with a requisition under the last preceding section, the Collector shall ascertain and record the nature and estimated

(Secs. 11-12.)

value of any trees, jungle, fences or standing crops which may have been cut down or removed, and shall offer adequate compensation to the owners thereof, together with payment for all expenses incurred in carrying out the said requisition.

11. When the demarcation of a village or other convenient tract has been completed, the *amin* or other survey-officer shall, before sending in to the Collector the maps and papers relating thereto,

Amin or survey-officer to call upon persons to sign maps or papers.

by a general notice, in which the names of all persons required to appear shall be specified, and which shall be posted up at a convenient place in the village or tract,

call upon all persons who have pointed out any boundaries in such village or tract on behalf of those interested to attend before him within three days of the publication of the said notice for the purpose of inspecting the maps, field books and similar papers in which any boundary pointed out by any such person has been represented, and, by signing such maps and papers, to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them;

and every person so called upon shall be legally bound to attend before such *amin* or survey-officer, and to inspect the papers, in accordance with such requisition.

Any person so called upon who may object to sign the maps and papers as aforesaid shall be required to state his objections in writing, and such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

Statement of objections.

The signature affixed to any maps or papers under this section shall be in attestation of the fact that the boundaries thereon represented or any of them have been represented in accordance with those pointed out by the person signing; and the affixing of such signature shall not be held to prejudice the right of any person interested to make any objection to such boundaries on any other ground before the Collector under the next succeeding section.

Effect of signature.

12. On receipt in the Collector's office of the maps or papers showing any boundaries which have been demarcated, the Collector shall cause a notification to be posted in his office, and in such other places as he may think proper, informing all persons concerned that the maps and papers relating to the boundaries in the village or tract specified are open to inspection; and requiring any person who may have any objections to prefer, to prefer such objections within six weeks of the date of the posting of such notification, after which time the Collector

On receipt of maps. Collector to post notification in office.

(Sec. 13.)

will proceed finally to confirm the boundaries as laid down for the purpose of the survey.

Collector
when to is-
sue special
notice.

Whenever the Collector shall have reason to believe (either from the failure of any person interested or his representatives to sign the maps and papers on the spot when required by the survey-officer to do so under the last preceding section, or for any other reason) that any *zamindar* or person interested is likely to object to any boundary as laid down or as represented in the said papers,

the Collector shall cause^[1] a special notice, requiring such *zamindar* or other person to attend personally or by duly authorized agent before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than one month after the service of the notice, for the purpose of signing and thereby admitting the correctness of any maps or other papers which have been prepared under this Act in respect of any boundary in which such *zamindar* or other person is interested, or of stating in writing the substance of any objection which he may wish to prefer against the correctness of such maps or papers;

and, if any person so summoned shall fail to attend and to sign the said maps or papers, or to give in a written statement of his objections within the time prescribed, the Collector may proceed finally to confirm the boundaries as represented in such maps and papers, for the purposes of the survey and of this Act:

If agent
deposits
expenses of
making
copies,
Collector to
order them
to be
prepared.

Provided that, if within the time specified any such duly authorized agent deposits with the Collector the necessary expenses of making copies of the said maps or papers, the Collector shall order such copies to be prepared, and as soon as they are prepared shall cause a notice to that effect to be posted at his office, and the said agent shall be allowed such time as may be specified in such notice, not being less than fifteen days from the posting thereof, for the purpose of signing or of giving in a written statement of objections.

Procedure
when objec-
tion is stated.

When a written statement of objections has been given in, as in this section provided, the Collector, after holding any further inquiry which he may deem necessary, shall pass such order in respect of such objections as to him shall seem fit; and, if the objections shall seem to him not to be well-founded, shall direct that all expenses of such further inquiry, and all expenses entailed on any other person by such inquiry, shall be recovered from the person who made the objection.

Person mak-
ing subse-
quent objec-

13. Whenever any person, having failed to sign the maps and papers, or to give in his objections in writing within the time prescribed by the

[¹] *Sic. Read issue.*

(Secs. 14-15.)

notification or by the special notice mentioned in the last preceding section, shall, at any time before the Collector has finally confirmed the boundaries for the purposes of the survey, prefer any subsequent objection against the correctness of any maps or papers in respect of which such notification or notice was issued, tion may be required to deposit costs of further inquiry.

the Collector shall require him to deposit the estimated costs of any further inquiry which it may be necessary to make in respect of his objection;

and, if the said person shall fail to deposit such costs within the time specified by the Collector, he shall be deemed for all purposes of this Act to have admitted the correctness of the said maps and papers.

If the costs of any inquiry which may be deemed necessary be deposited, the Collector shall make such further inquiry at the expense of the person so objecting; and, if the objection shall seem to the Collector not to be well-founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other persons on account of such inquiry:

Provided that no person so making an objection after the prescribed time shall, under any circumstances, be entitled to recover the expenses which he is required to deposit before any further inquiry is made in respect of such subsequent objection.

PART III.

OF BOUNDARY-MARKS.

14. The Collector may cause to be erected temporary boundary-marks of such materials, and in such number and manner, as he may direct, on any lands to be surveyed under this Act; Collector may erect temporary boundary-marks.

and may require any occupant of land to maintain and keep in repair such marks or any boundary-marks,

until any survey-operation shall be concluded and a final award given as to any disputed boundary, or

until permanent boundary-marks may be erected in lieu thereof as hereinafter provided.

15. The Collector may at any time cause to be erected on any land which is to be, or which has been, surveyed under this Act, permanent boundary-marks of such materials, and in such number and manner, as he may determine to be sufficient to distinguish the boundaries of the estates, tenures, *mauzas* or fields for which the same are to be erected: Collector may erect permanent boundary-marks.

(Secs. 16-19.)

Specification
of marks and
estimate of
cost to be
posted.

Provided that, seven days before he proceeds to the erection of any permanent boundary-marks, the Collector shall, for the information of all concerned, cause to be posted in his office, and in the *mâl-cutcherry* or at some other convenient place on every estate concerned, a specification of the number and character of the marks which he proposes to erect on the estate and an estimate of their cost.

Apportion-
ment of ex-
penses.

16. All expenses incurred by the Collector in erecting temporary or permanent boundary-marks under this Act, shall, in manner hereinafter provided, be apportioned among, and levied from, the *zamindars* and tenure-holders on their estates:

Provided that no tenure-holder shall be liable to pay any portion of the expenses incurred by the erection of boundary-marks on an estate, unless some portion of his tenure is situated within fifteen hundred feet of some such boundary-mark.

Rent-free
lands
deemed part
of tenure.

17. All lands held without payment of rent, not being entered on the Collector's register of revenue-free tenures of the district, shall, for the purposes of this Act, be deemed to form a part of the tenure within the local boundaries of which they may be included; and if they be not included within the local boundary of any tenure, then to be a part of the estate within the local boundaries of which they are included, and if they be not included within the local boundaries of any one estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal, appoint:

Provided that no rent-free holding of which the annual value is less than five rupees shall be liable to pay any portion of the expenses of erecting boundary-marks under this Act.

Procedure
when occu-
pant fails
to maintain
boundary-
mark.

18. If any occupant on whom a requisition has been made under section 14 fails to maintain or keep in repair any temporary boundary-mark, the Collector may maintain, keep in repair or restore any such boundary-mark, and the expenses thereby incurred shall be recovered as provided in section 57 from the person so failing to maintain or keep in repair any such boundary-mark.

Zamindar,
etc., bound
to preserve
boundary-
marks and
give notice
to Collector
when injured.

19. Every *zamindar*, tenure-holder and farmer of land shall be legally bound to preserve, as far as lies in his power, such of the permanent boundary-marks lawfully erected on his estate, tenure or farm, or on the boundary between his estate, tenure or farm, and any other estate, tenure or farm, as may be assigned to him in that respect entirely, or jointly with other persons, under the provisions of section 29, and shall give immediate notice to the Collector if any such marks are injured, destroyed or removed, or require repairs.

(Secs. 20-25.)

20. Whenever it shall come to the notice of the Collector that any permanent boundary-mark erected under the provisions of this Act has been injured, destroyed or removed, or requires repairs, the Collector may cause such boundary-mark to be re-erected, restored or repaired, and may recover any expenses incurred in respect of such re-erection, restoration or repair, in such proportions as he shall think fit, from the *zamindars* and tenure-holders to whom such boundary-mark may have been assigned in that respect under the provision of section 29; and all such expenses shall be recoverable as provided in section 57.

Collector may re-erect injured boundary-marks and recover expenses from *zamindar*, etc.

21. Nothing contained in this Act shall be held to prohibit the Collector from causing any temporary or permanent marks to be erected, maintained or repaired by any occupant of land under the directions of the said Collector, and with the consent of such occupant.

Collector may cause boundary-mark to be erected by occupant of land with his consent.

The Collector shall repay to such occupant the expenses incurred in such erection or repair, and such expenses shall be apportioned and recovered as provided in Part IV.

PART IV.

OF THE APPORTIONMENT AND RECOVERY OF EXPENSES.

22. Upon the completion of the erection of boundary-marks on any tract of land of which the survey may have been ordered, or on any convenient portion thereof, the Collector shall forthwith prepare a statement of all expenses incurred in respect of such boundary-marks.

Collector to prepare statement of expenses in respect of boundary-marks.

23. Such statement shall show the total number of marks of each description which have been erected on such tract or portion of such tract, the aggregate cost of erecting all the marks of each description, the names of the estates and *mauzas* within, or on the boundaries of, which any marks have been erected and the total number of marks of each description erected within or on the boundary of each estate.

Contents of statement.

24. Upon the completion of such statement the Collector shall provisionally apportion the aggregate expenses of erecting the marks among the estates specified, with reference to the number of boundary-marks of each description which have been erected within or on the boundary of each estate.

Collector to apportion cost of erecting marks among estates.

25. So soon as the provisional apportionment shall have been made as required by the last preceding section, the Collector shall cause a notice

Notice to be served.

(Sec. 26.)

to be served on the *zamindar* of every estate on which the expenses have been apportioned—

- (a) specifying the sum which has been apportioned on his estate, and, as far as can be calculated, the sum which he will be required to pay on account of the service of notices on him under this section and section 29;
 - (b) informing him that the said statement is open to inspection in the office of the Collector;
 - (c) calling on him to appear in person, or by agent properly authorized, at the office of the Collector on a date to be specified in the notice (not being less than two months after the issue of the notice), on which date the Collector will proceed to consider any objections which may be made to the provisional apportionment of expenses;
 - (d) warning him that if he does not appear on the date fixed in pursuance of the notice, he will be deemed to have waived all objections to the share of the expenses apportioned to his estate;
- and (unless as otherwise hereinafter provided in sections 31, 32 and 33);
- (e) informing him that, under this Act, he is entitled to recover a portion of the amount which shall be finally made payable in respect of his estate under section 26, from such tenure-holders on his estate as are made liable to bear a portion of such expenses by sections 16 and 17 (of which sections a copy shall be annexed to the notice); and that in order to enable the Collector to apportion the said amount among the said tenure-holders, he may give in a list of all such tenures, as defined in this Act, held directly from him, with a specification of the number of boundary-marks of each description which are erected within or on the boundary of each tenure;
 - (f) and warning him that if he fails to give in a list of tenures as aforesaid on or before the said date, he will be deemed to have given up all claim to recover from the tenure-holders any part of the amount for which he may be held liable under section 26.

Collector to
make final
apportion-
ment.

26. On the date fixed in such notice the Collector shall proceed to consider all objections which may be made to the provisional apportionment, and to make such final apportionment of the expenses as shall seem to him fit.

(Secs. 27-30.)

In making such final apportionment the costs of serving all notices under section 25 shall be distributed rateably among the estates concerned, in proportion to the share of the expenses of erecting boundary-marks which may be apportioned to each estate; and the amount so finally apportioned as payable in respect of each estate, together with the costs of serving notices, rateably distributed as aforesaid, shall be due to the Collector from the *zamindars* of such estates.

27. Notwithstanding anything contained in the last preceding section, the Collector may postpone the final apportionment if it shall appear to him that a notice under section 25 has not been served on the *zamindar* of any estate which should be made liable for a portion of the expenses, or for any other sufficient reason. Collector may postpone final apportionment.

28. Any *zamindar* failing to appear on the date fixed in the notice served on him under section 25 will be deemed to have waived all objections to the payment of the amount apportioned to his estate, and will not be entitled to prefer any objections thereto on any subsequent date; and any *zamindar* failing to give in a list of tenures (when called upon under section 25 to give in such list), on or before such date, will be deemed to have given up all claim to recover from the tenure-holders any part of the amount which may have been apportioned as payable in respect of his estate under section 26. Zamindar failing to appear deemed to have waived objections.

29. So soon as the expenses shall have been finally apportioned under section 26 among the estates concerned as hereinbefore provided, the Collector shall issue a notice in respect of every estate, specifying the amount finally apportioned as payable in respect of the estate, and requiring the *zamindar* to pay such amount to the Collector, together with the costs of serving such notice, within one month of the issue of the notice. Collector to issue notice specifying amount finally apportioned.

If such amount be not paid to the Collector within such period, the same, with interest, at such rate, not exceeding six *per centum per annum*, as the Lieutenant-Governor may from time to time determine, may be levied as provided in section 57.

The notice issued under this section shall assign to the *zamindar*, or to the *zamindar* jointly with tenure-holders, the boundary-marks which they are legally bound to preserve under the provisions of section 19, and in respect of which they will be held liable to pay the costs of re-erection, maintenance and repair, under the provisions of section 20. Notice shall assign boundary-marks which zamindars are bound to preserve.

30. If the *zamindar* of any estate shall give in a list of tenures, as referred to in section 25, with an application to the Collector to apportion between his estate and the tenures the amount which has been Collector to apportion between zamindar and

(Secs. 31-32.)

tenure-
holders.

apportioned as payable in respect of his estate as aforesaid, the Collector shall proceed to make a provisional apportionment of the said amount between the *zamindar* and the tenure-holders, to serve notices on the said tenure-holders in the manner provided in section 25, and to make a final apportionment among the said *zamindar* and tenure-holders in the manner provided in sections 26 and 27; and the provisions of section 28 shall be applicable to such tenure-holders:

No separate
notice in res-
pect of ap-
portionment
of sum less
than two
rupees.

Provided that no separate notice shall be served under this section in respect of the provisional or final apportionment of the sum payable in respect of any tenure, if such sum be less than two rupees; but in respect of all such sums it shall be sufficient to publish a list showing the sums apportioned as payable.

Such list shall be published by being posted at the office of the sub-divisional officer and at a conspicuous place in some village within which lands appertaining to the tenure are situate.

Summary
apportion-
ment be-
tween *zamin-
dar* and
tenure-
holders.

31. Notwithstanding anything in this Part contained, whenever the Collector may consider that he has sufficient information (whether derived from papers compiled for the purposes of the road-cess, from inquiries made in the course of proceedings under this Act, or otherwise) to enable him in a summary way to make an apportionment of any expenses recoverable under this Act in respect of any estate, between the *zamindars* of, and the holders of, tenures in such estate, the Collector may, as soon as possible after he shall have made a provisional apportionment under section 24 of the sum payable in respect of such estate, and without calling on the *zamindar* to give in any list of tenures as provided in clause (e) of section 25, proceed to make a provisional apportionment between the *zamindars* and the tenure-holders of such estates of the sum which has been provisionally apportioned under section 24 as payable in respect of the estate.

Notice to
zamindar
when provi-
sional appor-
tionment
made
summarily.

32. Whenever any provisional apportionment of the sum payable between the *zamindars* and the tenure-holders may have been made summarily, as provided in the last preceding section,

the notice to be served on the *zamindar* under section 25 shall inform the *zamindar*, in addition to the particulars specified in clauses (a), (b), (c) and (d) of the said section, and instead of those specified in clauses (e) and (f),

that under this Act he is entitled to recover a portion of the amount which shall be finally apportioned as payable in respect of his estate under section 26 from the tenure-holders on his estate; and

(Secs. 33-35.)

that the Collector has made a provisional apportionment of the said sum between the *zamindar* and tenure-holders according to a list which shall be annexed to the said notice;

and shall warn him—

that if he fails to prefer any objection to such provisional apportionment on or before the date specified, he will be deemed to have given up all right to prefer any such objection at any future time; and

that the Collector will proceed to make such apportionment final, or to make any modifications in it which he may think fit:

Provided that the sum finally made payable by the *zamindar* shall not exceed the sum apportioned upon him in the said provisional apportionment between the *zamindars* and the tenure-holders.

33. As soon as a provisional apportionment between the *zamindar* and the tenure-holders shall have been made summarily as provided in section 31, the Collector shall proceed to serve notices on the tenure-holders concerned in the manner provided in section 30, and to do all other things as if the said provisional apportionment upon tenure-holders had been made on a list given in by the *zamindar* under section 30. Procedure on provisional apportionment.

34. In apportioning the amount among the *zamindar* and the tenure-holders the Collector shall first deduct such sum as he shall consider to be fairly payable by the *zamindar* in respect of lands not included in any tenure, and in respect of his interest in lands which are included in tenures; and in apportioning the remainder among the tenures he shall take into consideration the number of pillars erected within or on the boundary of each tenure, the extent of each tenure, and the distance at which it is situated from the boundary-marks; but no tenure shall be made liable for any portion of the sum so apportioned, unless some part of it be situated within fifteen hundred feet from some boundary-mark. Mode of apportionment among tenures.

35. So soon as the final apportionment among tenure-holders under section 30 shall be completed, the Collector shall cause to be issued notices to each of the said tenure-holders stating the amount payable in respect of each of their tenures, with interest (if any) calculated at the annual rate of six *per centum* from the date on which the *zamindar* paid to the Collector the sum which was apportioned on his estate under section 26, and the cost of serving upon the tenure-holder the notice under this section and calling upon him to pay the total amount so due to the *zamindar* of the estate of which the tenure is a part, within one month of the date of the notice: Notice of apportionment in respect of tenures.

(Secs. 36-40.)

No separate notice to tenure-holder required to pay less than two rupees.

Provided that no separate notice shall be served under this section on any tenure-holder who is required to pay a sum of less than two rupees as his share of the expenses apportioned under this Act; but in respect of such sums it shall be sufficient to publish a list in the manner prescribed by section 30, and no costs incurred in respect of the publication of any such list shall be recoverable from any person mentioned therein as liable to pay less than two rupees.

Collector not to issue notices to tenure-holders until *zamindars* have deposited costs.

36. Notwithstanding anything contained in section 35, the Collector shall not issue the notices therein mentioned to the tenure-holders until the *zamindars* concerned shall have deposited with the Collector the full amount of the costs of serving all the notices, and of publishing the lists as required by that section.

Apportionment between tenure-holder and holder of subordinate tenure.

37. The provisions of sections 25, 26, 27, 28, 29, 30, 34 and 35 shall be applicable, as far as possible, to every case in which any tenure-holder who has been made liable for the payment of any share of expenses under this Act may apply to the Collector to apportion the amount for which he has been made liable between himself and the holders of subordinate tenures direct from himself;

and the provisions of sections 31, 32 and 33, regarding the procedure for making a provisional apportionment in a summary way between a *zamindar* and the tenure-holders on his estate, shall be applicable, as far as possible, to the provisional apportionment of expenses between the holder of a tenure and the holders of under-tenures within his tenure:

Provided always that no such apportionment shall be made in respect of *raiyyats* who have a right of occupancy only, and whose rent is not fixed in perpetuity.

Recovery of sums payable to *zamindar* or tenure-holder.

38. Every *zamindar* or tenure-holder to whom any sum is payable under the preceding sections may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

Recovery of sums expended by Government.

39. The provisions of this Part shall apply to all sums expended by the Government since the first day of November 1874, in erecting boundary-marks.

PART V.

BOUNDARY-DISPUTES.

Procedure in case of dis-

40. If it shall come to the notice of the Collector in the course of survey under this Act, that a dispute exists as to any boundary which

(Secs. 41-44.)

should be surveyed, the Collector, after holding such inquiry as he ^{putes as to} may deem necessary, may determine such boundary as hereinafter pro- ^{boundary.} vided.

41. The Collector shall determine the boundary according to actual ^{Mode of} possession, and cause it to be secured by boundary-marks; ^{determining}

and the order of the Collector under this section shall, until it be ^{Force of} reversed or modified by competent authority, have the force of an order ^{Collector's} of any Civil Court declaring the parties to be in possession of the land ^{order.} in accordance with the boundary as determined by the Collector.

42. If, after holding the necessary inquiry, the Collector is unable ^{Power of} to discover which party was in possession of the disputed land when ^{Collector to} he instituted the inquiry under this section, the Collector may take ^{take posses-} possession of the land in dispute, and retain possession thereof until some ^{sion of land} party shall have established his right to the said land. ^{in dispute.}

43. Whenever the Collector thinks it necessary to decide a dispute ^{Power to} as to any boundary under the last preceding section, he may, with the ^{refer to} consent of the parties concerned, refer the same to arbitration. ^{arbitration.}

The procedure laid down in Chapter VI of Act 8 of 1859^[1] (*the Code of Civil Procedure*) shall, so far as may be practicable, be applicable to disputes so referred to arbitration.

44. If the boundary regarding which the dispute exists as men- ^{Relaying} tioned in section 40 shall at any previous time have been determined ^{boundary} by any Court of competent jurisdiction, or shall have been laid down ^{previously} and shown on a map in the course of any previous revenue-survey or ^{determined} settlement, and no objection to the boundary as then laid down and ^{by court or} mapped shall have been preferred before any authority competent to ^{by revenue-} decide on such objection; ^{survey.}

Whenever the dispute relates to the boundary of an estate which is liable for revenue, or to any other boundary by which the interests of the Government may be affected, the Collector shall,

and whenever the dispute relates to any other boundary, the Collector may, if he thinks fit,

relay, as nearly as may be possible, the boundary as previously determined or laid down and shown on the map, and cause such boundary to be shown on the survey-map, with an explanatory note to the same:

[¹] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to s. 89 of, and Sch. II to, the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 45-46.)

Provided that the relaying and record of a boundary by the Collector under this section shall not affect the possession of any land by any party, and shall be in addition to the determination and record of the boundary according to actual possession required by section 41.

Collector may deviate from boundary if parties agree.

Nothing contained in this section shall be held to prohibit the Collector from deviating from a boundary as held by actual possession or as shown on a former map, and laying down a new boundary, if all the parties concerned agree to such new boundary, on the ground that the boundary held by actual possession, or as shown on the former map, was incorrect, and if it appears to the Collector that there is no objection to the adoption of such new boundary.

The reason for every such deviation shall be recorded in the Collector's proceedings.

Power of Collector in case of doubt or dispute as to boundary determined by Court or laid down by survey.

45. If it shall come to the notice of the Collector at any time, or in any manner, that a doubt or dispute exists in respect to any boundary—

(a) which has at any time been determined by a competent Court; or

(b) which has been laid down and shown on a map, in the course of a previous revenue-survey or settlement, or other proceeding of a revenue-officer for any special purpose, and against which no objection has been preferred to any authority competent to decide upon such objection; or

(c) which has been laid down by survey under this Act,—

the Collector may, if he thinks it desirable for any reason that the boundary so determined or laid down shall be relaid, proceed to relay the boundary in the manner prescribed in section 44 of this Act,

and for the purpose of so relaying the boundary he may make any inquiries and surveys which may be necessary, and such inquiries and surveys shall be deemed to be proceedings under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries and surveys under that section.

In certain cases Collector may cause marks to be erected.

46. Whenever the Collector shall have determined a boundary which was in dispute, and the order shall have become final,

and whenever a boundary which has been supplied by the survey officers, or has been determined under this Act, has been altered by a decree of any Civil Court which has become final,

and whenever it shall come to the notice of the Collector that any boundary has been determined by a competent Court or authority,

(Secs. 47-48.)

the Collector may cause such marks as he may think fit to be erected in order to secure the boundary permanently, and the provisions of Parts III and IV shall, so far as is possible, be applicable to boundary-marks which are erected under this section and to the apportionment of the cost thereof.

PART VI.

MISCELLANEOUS.

47. Whenever any estate or tenure is held jointly by two or more *zamindars* or tenure-holders, all such *zamindars* and tenure-holders shall be jointly and severally liable in respect of every liability imposed on *zamindars* or tenure-holder respectively by this Act,

Joint
zamindars
subject to
every liability
imposed
on single
zamindars.

and any shareholder in any estate or tenure who may have paid the amount finally apportioned to such estate or tenure may recover from his co-sharer such sums as may be payable in respect of their shares as arrears of rent, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

48. Every notice in and by this Act required to be served on any person may be served—

Service of
notice.

- (1) by delivering the same to the person to whom it is directed, or on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to a general agent of the person to whom such notice is directed; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode, or to the place where he may be known to reside; or
- (3) by posting a copy of the notice at any *mál-cutcherry* of the estate or tenure of the person to whom the notice is directed; or if no such *mál-cutcherry* be found, on some conspicuous place on the said estate or tenure to which such notice relates, and by delivering, in the case of estates paying their annual revenue by four instalments, another copy thereof to any agent who shall have paid an instalment of revenue next after the preparation of such notice.

In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

(Secs. 49-53.)

No proceedings under Act affected by mistake or misdescription.

49. No proceedings under this Act shall be affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure or land in respect of which he is rendered liable to pay, or by reason of any other informality, provided the directions of this Act be in substance and effect complied with; and no proceedings under this Act shall be affected by reason of the omission to serve any notice on any *zamindar* whose name is not recorded on the Collector's registers as owner of the estate in respect of which the notice is required to be served.

Power of Collector to enforce attendance of witnesses.

50. For the purpose of any inquiry under this Act the Collector shall, in addition to every power conferred specially by this Act, have power to summon and enforce the attendance of witnesses and compel the production of documents by the same means (as far as may be), and in the same manner, as is provided in the case of a Court under the Code of Civil Procedure.[¹]

8 of 1859.

Daily fine for failure to comply with requisition in notice.

51. If any person shall fail to comply with a requisition contained in any special notice served under section 7 of this Act, or in any notice served for the purpose of any inquiry under Part V of this Act, within the time specified in such notice the Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees, and such fine shall be payable daily until the requisition is complied with; and the Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

Penalty for not giving notice of injury to boundary-mark.

52. Any person, being bound by the provisions of section 19 to give notice to the Collector in respect of any boundary-mark having been injured, destroyed or removed, or requiring repairs, who shall fail to give such notice, shall be liable to a fine not exceeding one hundred rupees, to be imposed by order of the Collector.

Penalty for removing boundary-marks.

53. Any person convicted before a Collector of wilfully erasing, removing or damaging any boundary-mark (not being a land-mark fixed by the authority of a public servant within the meaning of section 434

[¹] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. This latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 54-58.)

45 of 1860. of the Indian Penal Code^[1]) which has been lawfully erected, may be ordered by the convicting officer to pay such sum, not exceeding two hundred rupees, for each mark so erased, removed or damaged, as the said officer may think fit, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so erased, removed or damaged.

54. The Collector may award any portion of a fine imposed under either of the two last preceding sections, and which may be realized, to any person who may have given information leading to the imposition of the fine. Collector may award portion of fine to informer.

10 of 1872. 55. A fine under sections 51, 52, and 53 may be levied, as far as may be practicable, in the manner provided in section 307 of the Code of Criminal Procedure;^[2] but if no moveable property belonging to the person from whom the fine is due is found in the district within which the order was passed, then such fine may be levied as if it were an arrear of revenue. Levy of fine.

56. Whenever the person erasing, removing or damaging any boundary-mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been so ordered to pay, the boundary-mark shall be restored or repaired by the Collector, and the expenses thereby incurred shall be recovered from the occupants of such of the conterminous lands and in such proportions, as to the Collector may seem fit. When person removing boundary-mark cannot be found, Collector may repair.

57. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred or of any notices served, or of any costs payable by any party in an appeal, shall be deemed to be a demand * * *^[3]. Every amount due deemed a demand.

58. Except as provided in sections 59 and 60, no appeal shall lie as of right, against any order passed under this Act by any officer; but Appeal against orders.

the proceedings and orders of Assistant Superintendents and of Deputy Collectors under this Act shall be subject to the supervision and control of the Superintendent of Survey or Collector; Supervision of proceedings.

^[1] Printed in General Acts, 1834-67, Ed. 1909, p. 354.

^[2] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898); and this reference should now be taken to be made to ss. 386, 387 and 389 of the latter Act—see s. 3 thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

^[3] The words and figures “under s. 2 of Bengal Act 7 of 1868 (*an Act to make further provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue*), and shall be leviable as such,” which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted. As to the recovery of “demands,” see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this Code.

As to the application of s. 57 of the present Act, see also s. 20, *ante*.

(Secs. 59-61.)

the proceedings and orders of the Superintendent of Survey and of the Collector, to the supervision and control of the Commissioner of the Division; and

the proceedings and orders of all officers, to the supervision and control of the Board of Revenue: [1]

Government
may restrict
functions of
Commissioner.

Provided that the Government may order that, in the course of any survey under this Act, the functions of the Commissioner shall be restricted to the decision of appeals under section 60, and that the general powers of control and supervision over the Superintendent of Survey or Collector and their subordinate officers may be exercised by the Board of Revenue [1] direct.

Appeal
against cer-
tain orders of
Assistant
Superinten-
dent or
Deputy
Collector.

59. An appeal, if presented within one month of the date of the order appealed against, shall lie to the Collector or Superintendent of Survey against every order of a Deputy Collector or of an Assistant Superintendent—

- (a) determining under section 8 the amount to be paid as the price of materials or labour supplied;
- (b) determining under section 10 the amount to be paid as compensation;
- (c) deciding a boundary-dispute;
- (d) imposing a fine under this Act.

Appeal
against cer-
tain orders of
Collector or
Superinten-
dent of Sur-
vey.

60. An appeal, if presented within one month of the date of the order appealed against, shall lie to the Commissioner of the Division against every order of the Collector or Superintendent of Survey—

- (a) determining under section 8 the amount to be paid as value of materials or labour supplied;
- (b) determining under section 10 the amount to be paid as compensation;
- (c) determining a disputed boundary;
- (d) imposing a fine of more than fifty rupees on any person:

Provided that the order appealed against under clauses (a), (b) and (c) shall not have been passed by the Collector or Superintendent of Survey on an appeal preferred against the order of a subordinate officer.

Orders as to
costs on ap-
peal.

61. The Commissioner, Collector or Superintendent of Survey may pass such orders as they shall think fit in respect of the payment of costs incurred by any party in an appeal.

[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (Bihar and Orissa Act 1 of 1913).

(Secs. 62-63.)

62. No suit shall be brought to set aside an order of a Superintendent of Survey, Collector, Assistant Superintendent or Deputy Collector deciding a boundary-dispute, unless an appeal shall have been first preferred under section 59 or section 60, or unless the person suing was at the time when such order was passed a minor, or insane or an idiot.

No suit to be brought unless appeal first preferred.

63. With the sanction of the Lieutenant-Governor the Board of Revenue^[1] may lay down rules, not being inconsistent with this Act,—

Board of Revenue may lay down rules with sanction of Lieutenant-Governor.

to provide for the preparation of maps and registers, and for the collection and record of any information in respect of any land to be surveyed under this Act;

and generally to provide for the proper performance of all things to be done, and for the regulation of all proceedings to be taken, under this Act.

All inquiries ordered to be made for the collection of information under such rules shall be deemed to be inquiries under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries under that section.

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (Bihar and Orissa Act 1 of 1913).

BENGAL ACT 1 OF 1876.

(THE BENGAL MUHAMMADAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1876.)

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BENGAL ACT 1 OF 1876.

(THE BENGAL MUHAMMADAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1876.)^[1]

(19th January, 1876.)

An Act to provide for the voluntary registration of Muhammadan Marriages and Divorces.

Whereas it is expedient to provide for the voluntary registration of Preamble.
marriages and divorces among Muhammadans; It is enacted as
follows:—

1. This Act shall commence and take effect in those districts in the Local extent.
provinces subject to the Lieutenant-Governor of Bengal^[2] to which the
said Lieutenant-Governor shall extend it by an order^[3] published in the
Calcutta Gazette; and thereupon this Act shall commence and take
effect in the districts named in such order, on the day which shall be
in such order provided for the commencement thereof.

2. In this Act, unless there be something repugnant in the subject Interpretation.
or context,—

“Muhammadan Registrar” means any person who is duly authorized “Muham-
under this Act to register marriages and divorces: madan
Registrar.”

“Inspector-General of Registration” and “Registrar” respectively “Inspector-
mean the officers so designated and appointed under the Indian Regis- General of
Registration”
“Registrar.”

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903),
Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,
1873, Pt. IV, p. 1526; and for Proceedings in Council, see *ibid*, 1873, Supplement, p. 1586;
ibid, 1875, Supplement, pp. 1, 55, 119, 175, 407, 437 and 1358.

LOCAL EXTENT.—This Act extends only to districts notified under s. 1. For a list of
districts so notified, see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

The Act has been declared, by notification under the Scheduled Districts Act, 1874
(14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and
Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the
Chota Nagpur Division—see Vol. IV, Pt. III; but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in
Vol. I of this Code;

the Sonthal Parganas by the Sonthal Pargana Settlement Regulation, 1872 (3 of
1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regula-
tion, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

RULES.—For rules made under this Act, see the Bengal Local Statutory Rules and
Orders, 1912, Vol. I, Pt. VI.

^[2] This includes the present Province of Bihar and Orissa except the district of
Sambalpur.

^[3] For a list of orders made under s. 1, see the Bihar and Orissa Local Statutory Rules
and Orders, Vol. I, Pt. VI.

(Secs. 3-7.)

tration Act, 1871,^[1] or other law for the time being in force for the 8 of 1871. registration of documents:

“District.” “district” means a district formed under the provisions of the Indian Registration Act, 1871:^[1]

“Parda-nashin.” “*parda-nashin*” means a woman who, according to the custom of the country, might reasonably object to appear in a public office.

Lieutenant-Governor may grant licenses to register. 3. It shall be lawful for the Lieutenant-Governor^[1] to grant a license to any person, being a Muhammadan, authorizing him to register Muhammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration; and in like manner it shall be lawful for the said Lieutenant-Governor to revoke or suspend such license:

Provided that no more than two persons shall be licensed to exercise the said functions within the same limits: and provided further that, when two persons are so licensed to act within the same limits, the one shall be a member of the *Sunni*, and the other of the *Shia*, sect.

Muhammadan Registrars to use seals. 4. Every Muhammadan Registrar shall use a seal bearing the following inscription in the Persian character and language: “The seal of the Muhammadan Registrar of .”

Government to provide seal and books. 5. The Lieutenant-Governor shall supply for the office of every Muhammadan Registrar the seal and the books necessary for the purposes of this Act.

The pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Muhammadan Registrar to keep registers. 6. Every Muhammadan Registrar shall keep up the following register-books:—

Book I.—Register of marriages, in the Form A contained in the Schedule to this Act.

Book II.—Register of divorces other than those of the kind known as *Khula*, in the Form B contained in the Schedule to this Act.

Book III.—Register of divorces of the Kind known as *Khula*, in the Form C contained in the Schedule to this Act.

Entries to be numbered. 7. All entries in each register prescribed by the last preceding section shall be numbered in a consecutive series, which shall commence

[¹] Act 8 of 1871 was repealed and re-enacted by Act 3 of 1877, which again has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), and this reference should now be construed as a reference to the latter Act (in General Acts, 1904-1909, Ed. 1909, p. 560)—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 8-9.)

and terminate with the year, a fresh series being commenced at the beginning of each year.

8. Every application for registration under this Act shall be made to the Muhammadan Registrar orally as follows:—

Applications, by whom to be made.

if the application be for the registration of a marriage—

by the parties to the marriage jointly: provided that if the man, or the woman, or both, be minors, application shall be made on their behalf by their respective lawful guardians: and provided further that, if the woman be a *parda-nashin*, such application may be made on her behalf by her duly authorized *vakil*.

if the application be for registration of a divorce other than of the kind known as Khula—

by the man who has effected the divorce;

if the application be for the registration of a divorce of the kind known as Khula—

by the parties to the divorce jointly: provided that, if the woman be a *parda-nashin*, such application may be made on her behalf by her duly authorized *vakil*.

9. On application being made to a Muhammadan Registrar for registration under this Act of a marriage or divorce within one month of the marriage or divorce being effected, and not otherwise, and on payment to him of a fee of one rupee, the Muhammadan Registrar shall—

Duties of Muhammadan Registrar on application.

- (a) satisfy himself whether or not such marriage or divorce was effected by the person or persons by whom it is represented to have been effected;
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected;
- (c) in the case of any person appearing as representative of the man or woman (whether he appears as guardian or *vakil*), satisfy himself of the right of such person to appear.

If the Muhammadan Registrar be satisfied on the above points, and not otherwise, he shall make an entry of the marriage or divorce in the proper register:

Provided that no such entry shall be made otherwise than in the presence of every person who, by section 11 of this Act, is required to sign such entry.

(Secs. 10-11.)

Muhammadan Registrar may receive gratuity.

Entries by whom to be signed.

10. Nothing in the preceding section shall be held to prohibit a Muhammadan Registrar from receiving a gratuity in excess of the prescribed fee of one rupee, when such gratuity is voluntarily tendered.

11. Every entry in a register kept under this Act shall be signed as follows:—

if the entry be of a marriage in a register in the Form A contained in the Schedule to this Act,—

- (1) by the parties to the marriage, or, if either or both of them be minors, by their lawful guardians respectively: provided that, if the woman be a *parda-nashin*, the entry may be signed on her behalf by her duly authorized *vakil*.
- (2) by two witnesses who were present at the marriage-ceremony;
- (3) in cases in which the woman is represented by a *vakil*—by two witnesses to the fact of the *vakil* having been duly authorized to represent her;
- (4) by the Muhammadan Registrar;

if the entry be of a divorce other than the kind known as Khula in a register in the Form B contained in the Schedule to this Act,—

- (1) by the man who has effected the divorce;
- (2) by the witness who identifies the man who has effected the divorce;
- (3) if the man be of the *Shia* sect—by two witnesses to the divorce being effected;
- (4) by the Muhammadan Registrar;

if the entry be of a divorce of the kind known as Khula in a register in the Form C contained in the Schedule to this Act,—

- (1) by the parties to the *Khula*: provided that, if the woman be a *parda-nashin*, the entry may be signed on her behalf by her duly authorized *vakil*;
- (2) by the person who identifies the man;
- (3) by the person who identifies the woman;
- (4) if the application for registration has been made by a *vakil* on behalf of the woman—by two witnesses to the fact of the *vakil* having been duly authorized to represent her;
- (5) if the man be of the *Shia* sect—by two witnesses to the divorce being effected;
- (6) by the Muhammadan Registrar.

(Secs. 12-17.)

12. On completion of the registration of any marriage or divorce, the Muhammadan Registrar shall deliver to each of the applicants for registration an attested copy of the entry: and for such copy no charge shall be made. Copies of entry to be given to parties.

13. In every office in which any register hereinbefore mentioned is kept, there shall be prepared a current index of the contents of such register; and every entry in such index shall be made, so far as practicable, immediately after the Muhammadan Registrar has made an entry in any such register. Index to be kept.

14. The index mentioned in the last preceding section shall contain the name, place of residence and father's name of each party to every marriage or divorce, and the date of registration. Particulars to be shown in index.

It shall also contain such other particulars, and shall be prepared in such form, as the Lieutenant-Governor may direct.

15. Subject to the previous payment of the fees prescribed, the index, whether it be in the office of the Muhammadan Registrar or of the Registrar of the district, and the copies of entries in such index, which are filed in the office of the Registrar of the district under the provisions of section 22 of this Act, shall be at all times open to inspection by any person applying to inspect the same; and copies of entries in any of the registers, and of the certified copies of such entries, which are filed in the office of the Registrar of the district under section 22 of this Act, shall be given to all persons applying for such copies. Index may be inspected and copies of entries in registers taken.

Such copies shall be signed and sealed by the Registrar of the district or by the Muhammadan Registrar, as the case may be.

16. Every Registrar of a district and every Muhammadan Registrar shall, for the purposes of this Act, be entitled to levy the following fees:— Fees for searches and copies.

for every search or permission to search in any index or register under his charge—four annas:

for every certified copy of any entry in a register other than the first copy referred to in section 12 of this Act—one rupee.

17. Every Muhammadan Registrar shall perform the duties of his office under the superintendence and control of the Registrar, in whose district the office of such Muhammadan Registrar is situate. Muhammadan Registrar to be subject to control of district Registrar.

In the town of Calcutta every Muhammadan Registrar shall perform the duties of his office under the superintendence and control of the Inspector-General of Registration.

Every Registrar, and in the town of Calcutta the Inspector-General of Registration, shall have authority to issue (whether on complaint

(Schedule.)

SCHEDULE.

(See sections 6 and 11.)

FORM A. BOOK I.

Register of Marriages (as prescribed by section 6 of the Act for the voluntary registration of Muhammadan marriages and Divorces).

1. Consecutive number.

2. Name of the bridegroom and that of his father, with their respective residences.

3. Name of the bride and that of her father, with their respective residences.

4. Whether the bride is a spinster, a widow or divorced by a former husband, and whether she is adult or otherwise.

5. * Name of the guardian of the bridegroom (if the bridegroom be a minor) and that of the guardian's father, with specification of the guardian's residence, and of the relationship in which he stands to the bridegroom.

6. * Name of the guardian of the bride (if she be a minor) and that of his father, with specification of his residence, and the relationship in which he stands to the bride.

7. † Name of the bride's *vakil* and of his father, and their residences, with specification of the relationship in which the *vakil* stands to the bride.

8. † Names of the witnesses to the due authorization of the bride's *vakil*, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.

9. Date on which the marriage was contracted,—to be given according to the English style and according to the era current in the district.

10. Amount of dower.

11. How much of the dower is *mu'ajjal* (prompt) and how much *mu'wajjal* (deferred).

12. Whether any portion of the dower was paid at the moment. If so, how much.

13. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same.

* These columns will be blank if the bride and bridegroom, respectively, are not represented by guardians.

† These columns will be blank when the bride is not represented by a *vakil*.

(Schedule.)

14. Special conditions, if any.

15. Names of village or town, police-jurisdiction and district in which the marriage took place.

16. Name of the person in whose house the marriage-ceremony took place, and that of his father.

17. Date of registration,—to be given according to the English style.

FORM B. BOOK II.

Register of Divorces, other than those of the kind known as Khula (prescribed by section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

1. Consecutive number.

2. Names of the husband and of his father, and their residences.

3. Names of the wife and of her father, and their residences.

4. Date of divorce—according to the English style and according to the era current in the district.

5. Description of divorce.

6. Manner in which the divorce was effected.

7. Names of the village or town, police-jurisdiction and district in which the divorce took place.

8. Name of the party in whose house the divorce took place, and of his father.

9. Names of witnesses to the divorce, if any, the names of their fathers, and their respective residences.

10. Name of party identifying the husband before the Muhammadan Registrar and that of his father, and their residences.

11. Date of registration,—to be given according to the English style.

FORM C. BOOK III.

Register of Divorces of the kind known as Khula (prescribed by section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

1. Consecutive number.

2. Name of the husband and that of his father, and their residences.

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BENGAL ACT 3 OF 1876.

(THE BENGAL IRRIGATION ACT, 1876.)

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BENGAL ACT 3 OF 1876.

(THE BENGAL IRRIGATION ACT, 1876.)^[1]

(29th March, 1876.)

**An Act to provide for irrigation in the Provinces subject
to the Lieutenant-Governor of Bengal.^[2]**

Whereas it is necessary to make provision for the construction, Preamble.
maintenance and regulation of canals, for the supply of water therefrom,
and for the levy of rates for water so supplied, in the provinces subject
to the Lieutenant-Governor of Bengal;^[2] It is hereby enacted:—

PART I.

PRELIMINARY.

1. This Act may be called the Bengal Irrigation Act, 1876;

Short title.

It shall take effect in those districts in the provinces subject to the Local extent
Lieutenant-Governor of Bengal^[2] to which the said Lieutenant-
Governor^[3] shall extend it by an order^[4] published in the Calcutta Commence-
Gazette; and shall commence on the day which shall be in such order
provided for the commencement thereof.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1875, Pt. IV, p. 76; for Report of Select Committee, see *ibid*, p. 330; and for Proceedings in Council, see *ibid*, 1875, Supplement, pp. 8, 412, 1497, *ibid*, 1876, Supplement, p. 31.

LOCAL EXTENT.—This Act takes effect in Bengal districts to which it is extended by order under s. 1.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and Kolhan in the district of Singhbhum in the Chota Nagpur Division—see Vol. IV, Pt. III.

It is in force in the district of Angul, see Vol. IV, Pt. VI; but its application is barred in the Sonthal Parganas by the Sonthal Pargana Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

EXEMPTION FROM STAMP DUTY.—Bonds or mortgage-deeds executed by headmen nominated, under rules framed in accordance with section 99 of this Act, for the due performance of their duties under the Act, are exempted from stamp duty—see the Indian Stamp Act, 1899 (2 of 1899), Sch. I, Arts. 15, 57, in General Acts, 1898-1903, Ed. 1909, pp. 415, 432.

EXCLUSION OF OTHER ACTS.—Nothing in the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), applies to any embankment, land or water-course which is under the operation of the present Act—see Ben. Act 2 of 1882, s. 91, *post*.

Nothing in the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), applies to any canal or flood-embankment as defined in the present Act—see s. 4, *post*.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] Now the Lieutenant-Governor in Council of Bihar and Orissa.

^[4] For a list of orders made under section 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 2-3.)

Interpreta-
tion-clause.2. (*Repeal of Acts.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

3. In this Act, unless there be something repugnant in the subject or context,—

“Canal.”

(1) “canal” includes—

- (a) all canals, channels and reservoirs hitherto constructed, maintained or controlled by Government for the supply or storage of water, or which may hereafter be so constructed, maintained or controlled;
- (b) all works, embankments, structures, supply and escape-channels connected with such canals, channels or reservoirs;
- (c) all village-channels as defined in clause (2) of this section;
- (d) all drainage-works as defined in clause (3) of this section;
- (e) any part of a river, stream, lake, natural collection of water or natural drainage-channel to which the Lieutenant-Governor has applied the provisions of Part II of this Act, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;
- (f) all lands on the banks of any canal as defined in articles (a), (b), (c), (d) and (e) of this clause, which have been acquired by Government:

“Village-
channel.”

(2) “village-channel” means any channel by which water is led from a canal directly into the fields to be irrigated, and includes all subsidiary works connected with any such channel, except the sluice or outlet through which water is supplied from a canal to such channel:

“Drainage-
work.”

(3) “drainage-work” means any work in connection with a system of irrigation which has been or may hereafter be made or improved by the Government for the purposes of the drainage of the country, whether under the provisions of Part IV of this Act or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith, but does not include works for the removal of sewage from towns:

“Flood-em-
bankment.”

(4) “flood-embankment” means any embankment constructed or maintained by the officers of Government in connection with any system of irrigation-works for the protection of lands from inundation, or which may be declared by the Lieutenant-Governor to be maintained in connection with any such system; and includes all groins, spurs, dams and other protective works connected with such embankments:

“Collector.”

(5) “Collector” means the head revenue-officer of a district, and includes any officer appointed by the Lieutenant-Governor to exercise all or any of the powers of a Collector under this Act:

(Secs. 4-6.)

(6) "Court" means, in the Regulation Provinces, a principal Civil "Court." Court of original jurisdiction;

and, in the Non-Regulation Provinces, the Court of a Commissioner of a Division,

unless when the Lieutenant-Governor has appointed (as he is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

(7) "canal-officer" means an officer appointed^[1] under this Act to "Canal-officer." exercise control or jurisdiction over a canal or any part thereof; and includes every officer to whom any of the functions of a canal-officer under this Act have been assigned^[1] by the Lieutenant-Governor.

(8) "section" means a section of this Act:

"Section "

(9) "owner" includes every person having a joint interest in the "Owner." ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

4. Nothing contained in the Bengal Embankment Act, 1873,^[2] shall apply to any canal or flood-embankment as defined in this Act. Exemption from Bengal Embankment Act.

Ben. Act 6 of 1873.

5. The Lieutenant-Governor may from time to time declare by notification^[3] in the Calcutta Gazette, the officers by whom, and the local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed. Power to appoint officers.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

6. Whenever it appears expedient to the Lieutenant-Governor that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water, should be applied or used by the Government for the purpose of any existing or projected canal, Notification when water supply to be applied for public purposes.

the Lieutenant-Governor may, by notification^[4] in the Calcutta Gazette, declare that the said water will be so applied or used after a day

^[1] For a list of orders made under section 3 (7), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] So much of Ben. Act 6 of 1873 as is unrepealed is printed, *ante*, p. 155.

^[3] For lists of notifications issued under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[4] For a list of notifications issued under s. 6, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 7-10.)

to be named in the said notification, not being earlier than three months from the date thereof.

Powers of
canal-officer.

7. At any time after the day so named, any canal-officer acting under the orders of the Lieutenant-Governor in this behalf may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Notice as to
claims for
compensa-
tion.

8. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section 11 may be made before him.

A copy of sections 11, 12 and 13 shall be annexed to every such notice.

Contents of
notice.

9. When any claim for compensation is made before the Collector in accordance with the last preceding section, the Collector shall issue a notice requiring all persons interested in the matter in respect of which compensation is claimed to appear personally or by agent before him at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the property affected, and the amount and particulars of their claims to compensation for such interests.

Notice to
occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of the land entered on, and on such persons known or believed to be interested in the matter in respect of which compensation is claimed, or to be entitled to act for persons so interested, as reside within his district.

Power to
require
statements
as to name
and interests.

10. The Collector may also require any person on whom a notice may be served under the last preceding section, and who makes a claim for compensation in accordance therewith, to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the property affected or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Penalty for
failure to
comply.

If any person shall fail to comply within the time fixed by the notice with a requisition made under this section, the Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees; and such fine shall be payable daily until the requisition is complied with, and the Collector may proceed from time to time to levy the

(Sec. 11.)

amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

Every person required to make or deliver a statement under this section shall be deemed to be legally bound to do so within the meaning of sections 175 and 176^[1] of the Indian Penal Code.

Person required to make statements legally bound to do so. Damage for which compensation shall not be awarded.

11. No compensation shall be awarded for any damage caused by—

- (a) stoppage or diminution of percolation or floods;
- (b) deterioration of climate or soil;
- (c) stoppage of navigation, or of the means of rafting timber or watering cattle.

But compensation may be awarded in respect of any of the following matters:—

Matters in respect of which compensation may be awarded.

- (d) stoppage or diminution of supply of water through any natural channel to any defined artificial channel, whether above or underground, in use at the date of the issue of the notification under section 6;
- (e) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification;
- (f) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;
- (g) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act, 1871, Part IV;^[2]
- (h) any other substantial damage, not falling under any of the above clauses (a), (b) or (c), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

9 of 1871.

^[1] Printed in the General Acts, 1834-67, Ed. 1909, pp. 291, 292.

^[2] Act 9 of 1871 was repealed and re-enacted by Act 15 of 1877, which again has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to Part IV of the latter Act (in General Acts, 1904-09, Ed. 1909, p. 484)—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 12-14.)

Compensation for loss of tolls lawfully levied.

Notwithstanding anything contained in clause (c), compensation may be awarded in respect of the loss of any tolls which were lawfully levied on any river or channel at the time of the issue of the notification mentioned in section 6.

Diminution in market-value to be considered.

In determining the amount of compensation under this section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clauses (d), (e) or (f) of this section in respect of a work or channel not in use at the date of the notification, shall be acquired as against the Government, except by grant or under the Indian Limitation Act, 1871, Part IV.^[1] 9 of 1871.

Compensation for loss of drinking-water.

12. If any supply of drinking-water is substantially deteriorated or diminished by any works undertaken in accordance with a declaration made by the Lieutenant-Governor under section 6, the canal-officer shall be bound to provide within convenient distance an adequate supply of good drinking-water in lieu of that so deteriorated or diminished, and no person shall be entitled to claim any further compensation in respect of the said deterioration or diminution.

Limitation of claims.

13. No claim for compensation for any such stoppage, diminution or damage shall be entertained after the expiration of six months from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Inquiry into claim and tender of compensation.

14. On the day fixed in the notice mentioned in section 9, the Collector shall proceed to inquire summarily into the claim and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice given under section 9.

Power to summon witnesses.

For the purpose of such inquiry the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, as far as may be, in the

[¹] Act 9 of 1871 was repealed and re-enacted by Act 15 of 1877, which again has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to Part IV of the latter Act (in General Acts, 1904-09, Ed. 1909, p. 484)—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 15-18.)

8 of 1859.

same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure.^[1]

15. The Collector may, if no claimant attends pursuant to the notice, or if for any other cause he thinks fit, from time to time, postpone the inquiry to a day to be fixed by him. Postpone-ment of inquiry.

16. If the Collector and the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same. Award in case of compensation being agreed on.

Such award shall be filed in the Collector's office, and shall be conclusive, as between the Collector and the persons interested, of the value of the said property and the amount of compensation allowed for the same. Award to be filed and to be evidence.

17. If the Collector and the persons interested do not agree as to the amount of compensation to be allowed, or if upon the said inquiry any question respecting the title to the property of which the value has been diminished, or any right thereto, or interest therein, arises between or among two or more persons making conflicting claims in respect thereof, the Collector shall refer the matter to the determination of the Court in manner hereinafter provided. Collector to refer matter to court where compensation not accepted.

18. If, when the Collector proceeds to make the inquiry as mentioned in sections 14 and 15, no claimant attends, or if any person whom the Collector has reason to think interested does not attend, the Collector shall hold a proceeding and record the following particulars:— Collector to record particulars in certain cases.

- (a) the nature and extent of the property of which the value has been diminished and in respect of which compensation is claimed, and the character and extent of the damage done;
- (b) the names of the persons whom he has reason to think interested in such property;
- (c) the amount fixed by him as compensation; and
- (d) the grounds on which such amount was determined;

and shall place the amount so fixed by him in deposit, there to be held on account of the persons interested, and shall issue a notice to the persons believed to be interested, informing them that the said amount has been deposited as required by this section, and that, should no application be made to the Court (as provided in the next succeeding section) within six weeks of the issue of the notice on the last of the And to place amount of compensation in deposit.

[1] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 19-24.)

persons named therein, the Collector will pay the amount to any persons legally authorized to receive and to give an acquittance for the same.

Objections
to amount
of compen-
sation fixed
by Collector.

19. Any person on whom notice may be served under the same last preceding section, and any person interested in any property in respect of which such notice has been issued, may, within six weeks of the service of such notice, apply to the Court stating his objection to the amount of compensation as fixed by the Collector under the last preceding section, and the amount which he claims as compensation.

On receipt of such application the Court shall proceed to determine the amount of compensation to be paid on account of the claim and all other matters, as if a reference had been made to it under section 17.

Procedure in
making refer-
ence.

20. In making reference under section 17 the Collector shall state, for the information of the Court, the particulars mentioned in section 18.

Procedure on
receipt of re-
ference under
section 17.

21. On receipt of a reference under section 17 the Court shall proceed, as far as may be practicable, in accordance with sections 19 to 23 (inclusive), and sections 26 to 36 (inclusive), of the Land Acquisition Act, 10 of 1870,^[1] 1870 :^[1]

Provided that, instead of the last clause of the said section 26, the following shall be read :—“ The provisions of this section and of section 11 of the Bengal Irrigation Act, 1876, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded.”

Particulars
of apportion-
ment to be
specified.

22. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, whether such award be made by the Collector or by the Court, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Disputes as
to apportion-
ment.

23. When the amount of compensation has been settled under section 16, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

All costs entailed by such a reference, and the proceedings of the Court thereon shall be paid by the parties who dispute the apportionment of the compensation in such proportions as the Court may direct, and the Collector shall not be required to disburse any such costs, nor shall any such costs be recovered from the Collector.

Determina-
tion of pro-
portions.

24. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under the last preceding section,

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to ss. 20 to 22 and 25 to 28 of the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 25-28.)

the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

An appeal shall lie from every such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie, in the first instance, to the District Judge.

§ of 1859.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure^[1] for regular appeals in suits.

25. Payment of the compensation shall be made by the Collector in accordance with the award made by him under section 16; or the proceeding held by him under section 18, if no application be made to the Court as provided by section 19; or the award made by the Court or the decision of the Judge under section 21; or, in the case of an appeal, under section 24 in accordance with the decision in appeal, as the case may be. Payment of compensation.

26. The amount of compensation fixed by any award, proceeding or decision, as specified in the last preceding section, shall be deemed to be the full amount payable by the Government in respect of the claim dealt with therein; and the Government shall not be liable for any further claim to any person whatever in respect of any matter which was the subject of such award, proceeding or decision; nor shall any such claim be made against the Government in respect of the payment of any portion of such compensation in accordance with any award, proceeding or decision as aforesaid, or in accordance with any decision of the Judge, or of the District Judge, or of the High Court in appeal, as the case may be, under section 24; and no suit shall be brought to set aside an award or decision under this Act. Government not liable to further claim.

27. Nothing contained in the last preceding section shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto. Liability of person receiving compensation not affected.

28. Every tenant holding under an unexpired lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of the supply in respect of which compensation is allowed under section 11 takes place, may claim an abatement Abatement of rent on interruption of water-supply.

[¹] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-1909, Ed. 1909, p. 184.

(Secs. 29-32.)

of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding:

Provided that no part of the said compensation shall have been received by the said tenant in respect of such reduction in the value of his holding.

Enhancement
of rent on
restoration
of water-
supply.

29. If a water-supply increasing the value of such holding is afterwards restored to the said land otherwise than at the cost of the tenant, the rent of the tenant may be enhanced, in respect of the increased value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

Compensa-
tion when
due.

30. All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of, and simple interest at the rate of six *per centum per annum* shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same:

Interest.

Collector may
invest amount
deposited
or awarded
in Govern-
ment
securities.

Provided that the Collector may at any time invest the whole or any portion of the amount payable as compensation under this Act in any Government securities, and such securities shall be held by the Collector for the benefit of the persons interested, and the persons interested shall be bound to receive such securities with any interest which may have accrued upon them as full payment of the sum which the Collector paid for such securities, and of any sum which he may have paid as expenses incurred in purchasing the same, and of any interest which might otherwise have accrued on such sums.

No compen-
sation in
respect of
prior works.

31. No compensation shall be claimable under this Act in respect of any works executed before it came into force, or of any damage, injury or loss caused by such works.

Service of
notice.

32. Service of any notice under this Part shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named

(Secs. 33-36.)

ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

PART III.

OF THE MAINTENANCE OF CANALS.

No of 1870.

33. Whenever it shall be necessary to make any inquiry or examination in connection with a projected canal or with the maintenance of an existing canal, or with a projected flood-embankment, or with the maintenance of an existing flood-embankment, any canal-officer or other person acting under the general or special orders of a canal-officer may enter upon such land as he may think necessary for the purpose, and may exercise all powers and do all things in respect of such lands as he might exercise and do if the Government had issued a notification under the provisions of section 4 of the Land Acquisition Act, 1870,^[1] to the effect that land in that locality is likely to be needed for a public purpose; and may set up and maintain water-gauges, and do all other things necessary for the prosecution of such inquiry and examination.

34. Such canal-officer or other person may also enter upon any land, building or village-channel on account of which any water-rate is chargeable for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

35. In case of any accident being apprehended or happening to a canal or flood-embankment, any canal-officer, or any person acting under his general or special orders in this behalf, may enter upon any lands adjacent to such canal or flood-embankment, and may execute all works which may be necessary for the purpose of preventing such accident, or repairing any damage done.

36. When such canal-officer or person proposes, under the provisions of either of the three last preceding sections, to enter into any building or enclosed court or garden attached to a dwelling-house not supplied with water flowing from any canal, and not being adjacent to a flood-

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to s. 4 of the latter Act—see s. 2.(3) thereof, in General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 37-39.)

embankment, he shall previously give to the occupier of such building, court or garden such reasonable notice as the urgency of the case may allow.

Compensation for damage to land.

37. In every case of entry upon any land or building under section 7, section 33, section 34 or section 35, the canal-officer or person making the entry shall ascertain and record the nature of any crop, tree, building or other property to which damage has been done, and the extent of the damage done to any such property, and shall tender compensation to the proprietors or occupiers for all damage done to the same by the entry or by any works executed.

If such tender is not accepted, the canal-officer shall refer the matter to the Collector, who shall thereupon give notice in writing to the person interested in such land and to the canal-officer, requiring them to attend before him, on a date to be fixed in the notice, for the purpose of making inquiry as to the amount of compensation.

Appeal from Collector's decision to Commissioner.

38. After such inquiry as he may think necessary, the Collector shall decide the amount of compensation payable; and such decision shall be subject to an appeal to the Commissioner of the Division:

Provided that such appeal be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the decision appealed against.

If no such appeal be preferred, the decision of the Collector, or, if such appeal be preferred, the decision of the Commissioner shall be final and conclusive.

Government to provide means of crossing canals and of drainage.

39. Suitable means of crossing canals constructed or maintained at the cost of Government shall be provided at such places as the Lieutenant-Governor thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands; and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent lands being obstructed by any canal.

Collector to certify to Government that means of crossing canals and drainage have been provided.

On the completion of any canal or of any convenient section of any canal the Collector, after causing such inspection to be made as may be necessary, shall certify to the Government that suitable and sufficient means of crossing the canal, and suitable and sufficient means of drainage as aforesaid have been provided; or shall report in what respects the provision made for the above purposes is defective; and if, at any time after he shall have given such certificate, it shall be brought to his notice that the provision made as above has proved insufficient, the Collector shall cause inquiry to be made into the circumstances of the case, and, if the statement is established, shall report his opinion thereon.

(Secs. 40-43.)

for the consideration of the Lieutenant-Governor, and the Lieutenant-Governor shall cause such measures in reference thereto to be taken as he thinks proper.

PART IV.

OF DRAINAGE.[¹]

40. Whenever it appears to the Lieutenant-Governor that injury to the public health or public convenience, or to any canal, or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, the Lieutenant-Governor may, by notification[²] published in the Calcutta Gazette, prohibit, within limits to be defined in such notification, the formation of any such obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or natural drainage-channel as is comprised within such limits shall be held to be a drainage-work as defined in section 3.

41. The canal-officer or other person authorized by the Lieutenant-Governor in that behalf may, after such publication, issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

42. If, within the time so fixed, such person does not comply with the order, the canal-officer may cause the obstruction to be removed or modified; and if the person to whom the order was issued does not, when called upon, pay the expenses of such removal or modification, such expenses shall be recoverable as a demand * * * [³].

Ben. Act 6 of
1873.

43. Whenever it appears to the Lieutenant-Governor that any drainage works are necessary for the public health, or for the improvement or proper cultivation or irrigation of any lands in districts to which the provisions of the Bengal Embankment Act, 1873,[⁴] do not apply,

[¹] For further enactments as to drainage, see the Bengal Drainage Act, 1880 (Ben. Act 6 of 1880), *post*, p. 337, and the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895) and the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), in Vol. III of this Code.

[²] For a list of notifications and orders issued under s. 40, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] The reference to Ben. Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

[⁴] So much of Ben. Act 6 of 1873 as is unrepealed is printed, *ante*.

(Secs. 44-47.)

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the Lieutenant-Governor may cause a scheme for such works to be drawn up and carried into execution, and the persons authorized by the Lieutenant-Governor to draw up and execute such scheme may exercise in connection therewith all or any of the powers conferred on canal-officers by sections 33, 34 and 35, and shall be liable to any or all of the obligations imposed upon canal-officers by sections 36 and 37.

Disposal of
claims to
compen-
sation.

44. Whenever, in pursuance of a notification made under section 40, any obstruction is removed or modified;

or whenever any drainage-work is carried out under the last preceding section,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction, or the construction of such work, may be made before the Collector, and he shall deal with the same in the manner provided in Part II; but no compensation shall be allowed for any damage arising from increase of percolation.

Limitation
of such
claims.

45. No such claim shall be entertained after the expiration of six months from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

PART V.

OF VILLAGE-CHANNELS.

“Person”
defined.

46. “Person” in this Part includes any number of persons acting jointly.

Register of
village-chan-
nels to be
kept.

47. The canal-officer shall keep a register of all village-channels, whether already existing or constructed under this Act, and shall note thereon in respect of every village-channel whether it is a public channel maintained at the cost of the Government, or a private channel maintained at the cost of the owners; and shall register the names of the owners of every such private channel.

Extension or
branch of
village-chan-
nel to be
registered.

A village-channel made as an extension of, or a branch to, an existing village-channel shall be registered as a separate village-channel; and so much of the length of any village-channel as lies within the limits of any one village or *mauza* shall be entered on the register as a separate village-channel.

(Secs. 48-51.)

Every section of a village-channel so separately entered on the register shall be deemed to be a separate village-channel in respect of all rights and liabilities imposed by this Act:

Provided always that, whenever it shall seem fit to the canal-officer for any special reason to enter upon his register as one village-channel a section of a village-channel which includes portions lying within two or more villages or *mauzas*, the canal-officer may, with the consent of the Collector obtained in writing, register such section as one village-channel, and such section shall be deemed to be one village-channel in respect of all rights and liabilities imposed by this Act.

Canal-officer may register as one village-channel section including portions lying within two or more villages.

48. Any person may, with the consent of the canal-officer, acquire the property in an existing village-channel for the purpose of improving or maintaining it—

Person may acquire existing village channel by agreement.

- (a) by taking over any village-channel belonging to Government;
- (b) by transfer of a village-channel from the owner thereof by private agreement.

49. Any person may, with the permission of a canal-officer, construct a new village-channel if he has obtained the consent of the owners and occupiers of the land required therefor.

Construction of new village-channel

50. Any person desiring the construction of a new village-channel, but being unable or unwilling to construct it under a private arrangement with the owners and occupiers of the land affected, as mentioned in the last preceding section, may apply in writing to the canal-officer stating—

Application by person desiring construction of new village-channel.

that he desires the said canal-officer, in his behalf and at his cost, to do all things necessary for constructing such village-channel;

that he is ready to defray all costs necessary for acquiring the land and constructing such village-channel.

51. If the canal-officer considers the construction of such village-channel expedient, he may call upon the applicant to deposit any part of the expense such officer may consider necessary,

Procedure when canal-officer considers construction of village-channel expedient.

and, upon such deposit being made, shall cause inquiry to be made into the most suitable alignment for the said village-channel,

and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the village-channel is proposed to be taken that so much of such land as is situated within such village has been so marked out,

(Secs. 52-54.)

and shall send a copy of such notification to the Collector of every district in which any part of such land is known to be situate for publication on such land.

Notice to person wishing to be joint owner.

Such notification shall also call upon any person who wishes to be admitted a joint owner of such village-channel to make his application in that respect within thirty days of the publication of such notification.

If any such applicant appears, and his application is admitted, he shall be liable to pay his share in the construction of such village-channel and in the cost of acquiring such land, and shall be an owner of such village-channel constructed.

Collector to acquire land.

52. On receipt of copy of such notification, the Collector shall proceed to acquire such land under the provisions of the Land Acquisition Act, 1870,^[1] as if a declaration had been issued by the Government for the acquisition thereof under section 6 of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section 7 of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section 17 of the said Act. 10 of 1870.

Procedure after construction of village-channel.

53. On being put in possession of the land the canal-officer shall construct the required village-channel; and on its completion shall give to the applicant notice thereof, and of any sum payable by him on account of the cost of acquiring the land and constructing the village-channel.

On such notice being given, such sum shall be due from the applicant to the canal-officer.

On receipt of payment in full of all expenses incurred, the canal-officer shall make over possession of such village-channel to such applicant.

Canal-officer may direct transfer of village-channel.

54. Whenever a canal-officer considers that the transfer of a village-channel from the owner is necessary for the proper management of the irrigation from such village-channel, he may cause a notice to be served on the registered owner to appear on a certain day, not less than fifteen days after service of notice, and to prefer any objection to such transfer.

After hearing such objection, the canal-officer may order that such village-channel shall be transferred to such person as he may think fit, and that such person be registered as owner of the said village-channel:

Provided that no person shall be registered as the owner of a village-channel under this section, unless he has expressed in writing his willingness to be so registered, and until he has paid to the canal-officer such sum as may be fixed by the canal-officer under section 56.

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894. (1 of 1894), and this reference should now be construed as a reference to the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 55-59.)

55. Any person wishing to become the joint owner of an existing village-channel may petition the canal-officer to that effect, and on receipt of such petition the canal-officer may, if he thinks fit, issue a notice as provided in the last preceding section upon the registered owner, and, after hearing any objection which the registered owner may prefer against the admission of such applicant to be a joint owner, may direct that the applicant shall be registered as such joint owner.

Person may be admitted joint owner of existing village-channel.

56. When deciding the question of transfer or of admission to joint ownership under either of the two last preceding sections, the canal-officer shall also determine what amount shall be paid—

Canal-officer to fix sums payable on transfer or acquisition of joint ownership.

as the costs of the proceedings;

as compensation to the previous owners;

and the amount so determined shall be due by the transferee, or the person admitted to registry as a joint owner, as the case may be; and, on payment of such amount, the village-channel shall be transferred, or the applicant shall be registered as owner or as a joint owner thereof, as the case may be.

57. Instead of awarding payment of compensation under the last preceding section, the canal-officer may fix an amount of rent to be paid annually to the previous owners by the persons to whom the village-channel is transferred.

Canal-officer may fix rent for a village-channel transferred.

58. Every person—

Ownership of village-channel.

(a) acquiring a village-channel as provided in section 48; or

(b) constructing a village-channel as provided in section 49; or

(c) receiving possession of a village-channel as provided in section 53; or

(d) acquiring a village-channel by transfer as provided in section 54; or

(e) being admitted to registration as joint owner in a village-channel as provided in section 55;

shall be deemed to be an owner of such village-channel.

59. Every owner of a village-channel shall be bound—

Obligations and rights of owner of village-channel.

(a) to construct and maintain all works necessary for the passage across such village-channel of canals, village-channels, drainage-channels and public roads existing at the time of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(Secs. 60-63.)

- (b) to maintain such village-channel in a fit state of repair for the conveyance of water;
- (c) to allow the use of it to others on such terms as may be declared equitable by the canal-officer as hereinafter prescribed;

and shall be entitled—

- (d) to have a supply of water by such village-channel at such rates and on such terms as are prescribed by the rules made by the Lieutenant-Governor under section 99;
- (e) to receive such rent for the use of the village-channel by other persons as the canal-officer may award him.

If owner of village-channel fails to execute work or repair canal-officer may do so.

60. If the owner of a village-channel fails to fulfil the obligations mentioned in clauses (a) and (b) of the last preceding section, the canal-officer may require him by notice to execute the necessary works or repairs within a period not being less than fifteen days, and in the event of failure may execute them on his behalf;

and all expenses incurred by the execution of such works or repairs shall be a sum due by such owner to Government;

and, if any such owner who has already failed on one occasion to execute such works or repairs when required to do so, and has left them to be executed on his behalf by the canal-officer, shall again fail to execute any such works or repairs when required to do so; or if any such owner shall refuse in any respect to fulfil the obligation mentioned in clause (c) of the last preceding section, after having been required to fulfil the same by a notice in writing from the canal-officer, the canal-officer may strike such village-channel off the register, and so disqualify it to be any longer a medium for the conveyance of canal-water.

Resignation of ownership.

61. Any owner may resign his interest in a village-channel:

Provided such resignation be duly registered in the office of the canal-officer.

Owner may transfer interest.

62. Any owner of a village-channel may, with the consent of the canal-officer, transfer his interest to any other person:

Provided that the liabilities of the person so transferring shall not cease till such transfer is registered in the office of the canal-officer.

Procedure on death of owner of village-channel.

63. If any owner of a village-channel dies, his legal representative may apply for registration in his stead.

If no such application for registry be made within six weeks from the death of the said owner, the remaining registered owners of the village-channel, if any, shall be deemed to be owners of the entire interest in the

(Secs. 64-69.)

village-channel, until some other person shall have established his claim to be registered as owner in place of the deceased.

If the deceased shall have been the sole registered owner, the canal-officer shall be deemed to be his representative for the purposes of this Part, and shall exercise all rights and be bound by all liabilities which attached to the deceased in respect of his ownership of the said village-channel, until some person shall have established his right to be registered as owner thereof in place of the deceased; and the canal-officer shall account to such person for all sums received and expended in the exercise of the rights and discharge of the liabilities which attached to the deceased in respect of such ownership.

64. When any person applies for registration under the three last preceding sections, the canal-officer shall serve notice on the other registered owners to prefer any objection to the resignation, transfer or succession within fifteen days, and, if no such objection shall be made, or if the objections made be deemed invalid, shall order such resignation, transfer or succession to be registered.

Procedure when person applies for registration in lieu of deceased owner.

65. All joint owners of a village-channel shall be held to have an equal interest in it, unless, with the permission of the canal-officer, they register specific unequal interests.

Interest of owners equal unless unequal interest registered.

66. Any person not an owner of a village-channel, desiring to have a supply of water through such village-channel, may make a private arrangement with the owners for the conveyance of water, or may apply to the canal-officer for authority to use such village-channel.

Supply of water to person not owner.

67. On receipt of such application the canal-officer shall serve notice on the owners to show cause why such permission should not be granted, and, if no objection be raised, or if any objections be raised and found invalid, shall authorize the conveyance of such supply on such conditions as may appear to him equitable.

Canal-officer may authorize supply.

68. The canal-officer shall also fix a sum as rent to be paid for the use of such village-channel to the owner.

Canal-officer to fix rent of village-channel.

Such rent may be in the form of a percentage on the water-rate of the person using the village-channel, or otherwise, as may be fixed by the canal-officer.

69. The owner of a village-channel which receives its water through another village-channel may, at the discretion of the canal-officer, either be declared a joint owner of such other village-channel, or may be required to pay rent for the use of the same to the owner thereof, as provided in the last preceding section.

Owner of village-channel receiving supply through another village-channel.

(Secs. 70-75.)

Instalments
in which rent
is payable.

70. All rent payable under either of the two last preceding sections shall be deemed to be due in the same instalments and at the same periods as the water-rate is due, or in such other instalments and at such other dates as the canal-officer may direct, and may be collected by the canal-officer on behalf of the person entitled to it, if the canal-officer thinks fit.

Canal-officer
to pay no
more than
amount
collected.

71. Any canal-officer collecting rent under the last preceding section on behalf of any person entitled thereto shall be bound to pay to the person entitled to the same no more than the amount actually collected by him as rent.

Land acqui-
red not to be
used for other
purpose.

72. No land acquired under this Part for a village-channel shall be used for any other purpose without the consent of the canal-officer previously obtained.

Dues how
recovered.

73. Every sum declared to be due under this Part shall be recoverable by the canal-officer on behalf of the Government or of the person entitled to receive the same, and shall be held to be a demand * * * *^[1].

PART VI.

OF THE SUPPLY OF WATER.

Water
supplied on
written
application
only.

74. Every person desiring that water shall be supplied to his land from a canal shall present a written application to that effect to the canal-officer, in the form given in Schedule B hereto annexed, or in a similar form, binding himself by the rules made by the Lieutenant-Governor under the powers vested in him by this Act; and no person shall be liable to pay any rate or due whatever, on account of water supplied to his land with the permission of the canal-officer, otherwise than on such application, nor shall water be supplied otherwise than on such application.

Written
permission
to be given.

75. If the application mentioned in the last preceding section be granted by the canal-officer, the canal-officer shall cause his permission to be recorded in the form given in Schedule C hereto annexed, or in some similar form, binding himself by the rules made by the Lieutenant-Governor as aforesaid.

[¹] The reference to Ben. Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

(Sec. 76.)

76. All rules made by the Lieutenant-Governor under section 99 shall be consistent with the following conditions:—

Rules subject to conditions as to—
power to stop water-supply

(a) The canal-officer may not stop the supply of water to any village-channel, or to any person who is entitled to such supply, except in the following cases:—

- (1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority;
- (2) whenever and so long as any village-channel is not maintained in such repair as to prevent the wasteful escape of water therefrom;
- (3) whenever and so long as it is necessary to do so in rotation to supply the legitimate demands of other persons entitled to water;
- (4) whenever and so long as it may be necessary to stop the supply in order to prevent the wastage or misuse of water;

(b) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government, or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the canal-officer considers necessary; but the person suffering such loss shall be entitled to such remission of the ordinary charges payable for the use of the water as is authorized by the Lieutenant-Governor:

claims to compensation in case of failure or stoppage of supply.

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector shall award to the petitioner reasonable compensation for such loss.

claims on account of interruption from other causes;

(d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year:

supply;

(e) No person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sub-let or otherwise transfer his right to such use without the permission of the canal-

sale or sub-letting of right to use canal-water;

(Secs. 77-80.)

contracts for
water
transferable
with land.

officer, but all contracts made between Government and the owner or occupier of any immovable property, as to the supply of canal-water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes place.

Canal-officer
may supply
water for
purposes
other than
those of
irrigation.

77. On application being made for a supply of water to be used for purposes other than those of irrigation, the canal-officer may give permission for water to be taken for such purposes under such special conditions and restrictions as to the limitation and control of the supply as he shall think proper to impose in each case.

PART VII.

OF WATER-RATES.

Charge for
water, how
determined.

78. The rates to be charged for canal-water supplied for purposes of irrigation shall be determined^[1] by the Lieutenant-Governor, and all persons accepting the water shall pay for it accordingly.

Liability
when person
using water
unauthor-
izedly can-
not be
identified.

79. If water supplied through a village-channel be used in an unauthorized manner, and if the person by whose act or neglect such use has occurred cannot be identified,

the person on whose land such water has flowed, if such land has derived benefit therefrom,

or, if no land has derived benefit therefrom, all the persons chargeable in respect of the water supplied through such village-channel in respect of the crop then on the ground,

shall be liable to the charges made for such use, as determined by the Lieutenant-Governor under section 99.

Liability
when water
runs to waste.

80. If water supplied through a village-channel be suffered to run to waste, and if, after inquiry by the canal-officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, all the persons chargeable in respect of the water supplied through such village-channel for the crop then on the ground shall be jointly liable for the charges made in respect of the water so wasted, as determined by the Lieutenant-Governor under section 99.

All questions arising under this and the last preceding section shall be decided by the canal-officer, subject to the provisions of section 91.

[1] For a list of orders made under section 78, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 81-87.)

81. All charges for the unauthorized use or for waste of water shall be deemed to be water-rate due on the crop, and may be recovered as such water-rate in addition to any penalties incurred on account of such use or waste. Charges recoverable in addition to penalties.

82. The canal-officer may enter into an agreement with any person for the collection and payment to the Government by such person of any sum payable under this Act by a third party. Power to contract for collection of canal-dues.

83. Any sum lawfully due under this Part, either to the Government, or to any person who has entered into an agreement to collect dues for the Government and certified by the canal-officer to be so due, shall be deemed to be rent payable on a *patta* or engagement in respect of the land irrigated, and shall be recoverable as such by the person to whom it is payable: Sums payable under this Part deemed to be rent.

Provided that the claim (if any) for rent in respect of such land shall have priority over any claim for arrears of water-rate so far as regards recovery of rent by the exercise of the power of distraint.

84. If any person distrains half or more than half of any crop on account of which water-rate is due, such person shall be bound, on requisition by the canal-officer, to furnish him with an account showing how the produce thus distrained has been appropriated in payment of such rent, and the canal-officer shall be entitled to challenge such account before any Court competent to try suits for arrears of rent in respect of the land in question, and such Court, if it finds that the value of the crop distrained was in excess of the amount of rent which has been due for a period not longer than a year, together with the costs of the distraint, may require the distrainer to pay the water-rate due on such crop. Person who distrains may be called on to produce account.

85. Every arrear of water-rate which is due to Government, and every sum due to Government by any person on account of collection of water-rate, and every sum due to such person on account of water-rate and certified by the canal-officer to be so due, shall also be held to be a demand * * *^[1] Arrears of water-rate deemed to be demands.

86. Nothing in sections 82 to 85 (inclusive) applies to fines.

Sections not applying to fines.

PART VIII.

OF JURISDICTION.

87. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction Settlement of disputes as to mutual

[¹] The reference to Bengal Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

(Secs. 88-92.)

rights and
liabilities
of persons
interested in
village-channel.

or maintenance of a village-channel, any such person interested may apply in writing to the canal-officer stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter, and, after such inquiry, he may pass his order thereon, or may transfer the matter to the Collector, who shall thereupon inquire into and pass his order on the said matter.

Dispute as to
shares and
payments.

88. Whenever any dispute arises among joint owners of a village-channel as to their shares of expense or as to the amounts severally contributed, or as to failure on the part of any owner to contribute his share, the matter may be decided after inquiry by the canal-officer or Collector, as provided in the last preceding section.

Order passed
by Collector
and canal-
officer to
remain in
force until
set aside by
Civil Court.
Jurisdiction
as to suits
arising out of
powers of
distrain.

89. Any order passed by the Collector, under either of the two last preceding sections, and, subject to the provisions of section 91, any such order passed by a canal-officer, shall remain in force until set aside by the decree of a Civil Court, and may be executed by any canal-officer as if it were a decree of the Civil Court.

90. All suits arising out of the exercise of the power of distrain for recovery of water-rates,

or out of any acts done under colour of the exercise of the said power of distrain,

or by persons in receipt of the water-rates against any agents employed by them in the collection of such water-rates, or the sureties of such agents for money received or for accounts kept by such agents in the course of such employment, or for papers in their possession,

shall be cognizable by the same Court or authority as would have jurisdiction if such water-rates were rent due for the land irrigated.

Appeal and
supervision.

91. Every order passed by a canal-officer under Part V, Part VI, Part VII or Part VIII of this Act shall be appealable to the Collector, provided that the appeal be presented within thirty days of the date on which the canal-officer made the order appealed against; and no appeal shall lie against any proceeding or order of the Collector under this Act, except as otherwise expressly provided in this Act, but all such proceedings and orders shall be subject to the supervision and control of the Commissioner of the Division and of the Board of Revenue,^[1] who may pass such order thereon as they may respectively think fit.

Power to
summon and
examine
witnesses.

92. Any officer empowered under this Act to conduct any inquiry may exercise all such powers connected with the summoning and examin-

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act, 1 of 1913).

(Sec. 93.)

8 of 1859.

ing of witnesses, as are conferred on Civil Courts by the Code of Civil Procedure;[¹] and every such inquiry shall be deemed a judicial proceeding.

PART IX.

OF OFFENCES AND PENALTIES.

93. Whoever, voluntarily and without proper authority, does any of the acts following, that is to say:— Offences
under Acts.

(1) damages, alters, enlarges or obstructs any canal or drainage-work;
 (2) interferes with, increases or diminishes the supply of water in, or the flow of water from, through, over or under, any canal or drainage-work, or by any means raises or lowers the level of the water in any canal or drainage-work;

(3) being responsible for the maintenance of a village-channel, or using a village-channel, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner;

(4) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;

(5) destroys, defaces or moves any level-mark or water-gauge fixed by the authority of a public servant;

(6) destroys or removes any apparatus, or part of any apparatus, for controlling or regulating the flow of water in any canal or drainage-work;

(7) passes, or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to rules made under this Act after he has been desired to desist therefrom;

(8) without the permission of the canal-officer causes, or knowingly and wilfully permits, any cattle to graze upon any flood-embankments, or tethers, or causes or knowingly and wilfully permits any cattle to be tethered upon any such embankments, or roots up any grass or other vegetation growing on any such embankments, or removes, cuts or in any way injures or causes to be removed, cut or otherwise injured, any trees, bushes, grass or hedge intended for the protection of such embankment;

[¹] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 94-96.)

(9) violates any rule made under the Act, for breach whereof a penalty may be incurred,

Penalty.

shall, in case the offence shall not amount to mischief within the meaning of the Indian Penal Code,^[1] and on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment ^{45 of 1860.} for a term not exceeding one month, or to both.

Further offences.

94. Whoever, without the authority of the canal-officer,—

(1) pierces or cuts through, or attempts to pierce or cut through, or otherwise to damage, destroy or endanger the stability of, any flood-embankment;

(2) opens, shuts or obstructs, or attempts to open, shut or obstruct, any sluice in any such embankment;

(3) makes any dam or other obstruction for the purpose of diverting or opposing the current of a river on the banks whereof are flood-embankments, or refuses or neglects to remove any such dam or obstruction when so required by the canal-officer,

Penalty.

shall, in case the offence shall not amount to mischief within the meaning of the Indian Penal Code,^[1] and on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, or to ^{45 of 1860.} imprisonment for a term not exceeding six months.

Obstruction to be removed and damage repaired.

95. Whenever any person is convicted of an offence under either of the last two preceding sections, the convicting Magistrate may order that he shall remove the obstruction or repair the damage in respect of which the conviction is held within a period to be fixed in such order.

If such person neglects or refuses to obey such order within the fixed period, the canal-officer may remove such obstruction, or repair such damage, and the cost of such removal or repair shall be levied from such person by the Collector^[2] [under the procedure provided by the Public Demands Recovery Act, 1895,^[3] for the recovery of public demands.]

Ben. Act 1 of 1895.

Persons employed on canal may take offenders into custody.

96. Any person in charge of, or employed upon, any canal may remove from the lands or buildings belonging thereto, or may take into custody without a warrant and take forthwith before a Magistrate or to the nearest police-station, to be dealt with according to law, any person who within his view commits any of the following offences:—

(1) wilfully damages or obstructs any canal;

[¹] See Act 45 of 1860, s. 425, in General Acts, 1834-67, Ed. 1909, p. 352.

[²] These words and figures in square brackets in s. 95 were substituted for the words and figures "as a demand under s. 1 of the aforesaid Ben. Act 7 of 1868" by the Amending Act, 1903 (1 of 1903), Sch. II,—see Vol. I of this Code.

[³] Ben. Act I of 1895 was repealed and re-enacted by the Bengal Public Demands Recovery Act, 1913 (Ben. Act 3 of 1913). As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

(Secs. 97-99.)

(2) without proper authority interferes with the supply or flow of water in or from any canal or in any river or stream, so as to make dangerous or render less useful any canal.

97. Nothing herein contained shall prevent any person from being prosecuted under any other law for any offence punishable under this Act: Saving of prosecution under other laws.

Provided that no person shall be punished twice for the same offence.

98. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to any person who gave information leading to the detection of such offence, or to the conviction of the offender. Compensation to person injured.

PART X.

OF SUBSIDIARY RULES.

99. The Lieutenant-Governor may, from time to time, make rules^[1] to regulate the following matters:— Power to make, alter and cancel rules.

- (a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (b) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;
- (c) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act shall be done;
- (d) the amount of any charge made under this Act;
- (e) and generally to carry out the provisions of this Act.

The Lieutenant-Governor may, from time to time, alter or cancel any rules so made.

^[1] For a list of rules made under s. 99—see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

*(Schedules A and B.)***Publication
of rules.**

Such rules, alterations and cancelment shall be published in the Calcutta Gazette, and shall thereupon have the force of law :

Provided that no rules shall be made by the Lieutenant-Governor under the powers conferred on him by this section until a draft^[1] of the same shall have been published in the Calcutta Gazette for one month, after which time the Lieutenant-Governor may pass such rules as originally published, or with such alterations, additions and omissions as he may think fit.

(Schedules A. B.)

SCHEDULE A.

(Repeal of Bengal Acts 8 of 1876 and 6 of 1869). Rep. by the Repealing and Amending Act, 1903 (1 of 1903), now known as the Amending Act, 1903—vide Act 10 of 1914, Sch. II.

SCHEDULE B.

(See section 74.)

APPLICATION FOR WATER.

No.

Mauza.

Pargana.

Canal.

Village-channel.

Name of owner of village-channel.

Name of applicant.

I, the undersigned, hereby apply for water from the above-named village-channel for the fields and crops below detailed and I engage to pay to the canal-officer, or other person duly authorized to receive them, the water-rates as prescribed by the Lieutenant-Governor under the

^[1] As to such drafts, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 24, in Vol. III of this Code.

(Schedule C.)

provisions of the Bengal Irrigation Act, and I further agree to abide by all the rule issued under that Act:—

No. of field in revenue map.	Acreage of field.	Crop to be grown.

Signature or mark of applicant.

Date _____

(Schedule C.)

SCHEDULE C.

(See section 75.)

PERMISSION TO TAKE WATER.

No.

Permit

of village

to take water from

canal

village-channel

(Schedule C.)

for the undermentioned fields and crops:—

No. of field.	Acreage of field.	Crops to be grown.	Water-rate dues.	Date of payment.

Signature of Canal-officer.

*Date*_____

BENGAL ACT 7 OF 1876.
(THE LAND REGISTRATION ACT, 1876.)

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BENGAL ACT 7 OF 1876.

(THE LAND REGISTRATION ACT, 1876.)^[1]

(23rd August, 1876.)

An Act to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof.

Whereas it is expedient to make better provision for the preparation and maintenance of registers of revenue-paying and revenue-free lands, and of the proprietors and managers thereof, and of certain mortgages of revenue-paying lands; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Land Registration Act, 1876.

Short title.

(Commencement). *Rep. by the Repealing and Amending Act, 1903 (1 of 1903), now known as the Amending Act, 1903—vide Act 10 of 1914, Schedule II.*

[¹] LEGISLATIVE PAPERS.—For Report of Select Committee, *see* Calcutta Gazette, 1876, Part IV, p. 57; and for Proceedings in Council, *see* *ibid.*, Supplement, 1875, p. 11; *ibid.*, Supplement, pp. 42, 135, 515 and 829.

LOCAL EXTENT.—Since this Act contains no local extent clause, it must be taken to have been intended to extend to the whole of the former Province of Bengal.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan and the Porahat Estate in the District of Singhbhum in the Chota Nagpur Division, *see* Vol. IV, Pt. III.

It is in force in the Sonthal Parganas,—Vol. IV, Part VI; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

ANNOTATED REPRINT.—For an annotated reprint of this Act, *see* the Bengal Land Registration Manual, 1909, p. 6.

OTHER ENACTMENTS.—As to the registration of land, *see* also—

(1) the Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793 (19 of 1793), ss. 24 and 26 to 28, in Vol. I of this Code.

(2) the Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793 (37 of 1793), ss. 19 and 21 to 23, in Vol. I of this Code.

(3) the Bengal Revenue-free Lands Regulation, 1800 (8 of 1800), s. 19, in Vol. I of this Code.

(4) the Bengal Land-revenue Sales Act, 1859 (11 of 1859), s. 38, in Vol. I of this Code, and

(5) the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act 3 of 1862), *ante*, p. 1.

(6) The Chota Nagpur Tenure Act, 1869 (Ben. Act 2 of 1869), *ante*.

As to the registration of tenants' rights, *see* the Land Records Maintenance Act, 1895 (Ben. Act 3 of 1895), in Vol. III of this Code.

As to the effect of registration under the present Act, *see* the Bengal Tenancy Act, 1885 (8 of 1885), ss. 60, 93, 121, in Vol. I of this Code.

(Secs. 2-3.)

2. (*Regulations repealed*). *Rep. by the Repealing and Amending Act, 1903 (1 of 1903), now known as the Amending Act, 1903—vide Act 10 of 1914, Schedule II.*

Interpreta-
tion-clause.

3. In this Act, unless there be something repugnant in the subject or context,—

(1) “Civil Court” means any Civil Court which is competent to hear and determine the matter with respect to which the words are used;

(2) “estate” includes—

(a) any land subject to the payment of land-revenue, either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government;

(b) any land which is entered on the revenue-roll as separately assessed with land-revenue (whether the amount of such assessment be payable immediately or prospectively), although no engagement has been entered into with Government for the amount of revenue so separately assessed upon it as a whole;

(c) any land being the property of Government of which the Board shall have directed the separate entry on the general register hereinafter mentioned [¹][or on any other register prescribed for the purpose by rule made under this Act];

(3) “extent of interest” means the share or interest in an estate or revenue-free property of which the person with respect to whom the words are used is in possession as proprietor or manager;

(4) “Lieutenant-Governor” means the Lieutenant-Governor of Bengal [²] for the time being, or the person acting in that capacity;

(5) “local division” means a sub-division, *pargana*, *thana*, police division or jurisdiction, or other division according to which the *mauza-wár* register of the district is arranged;

(6) “Manager” means every person who is appointed by the Collector, the Court of Wards [³] or by any Civil or Criminal Court to manage

[¹] These words in square brackets were added to s. 3 (c), by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 2 (1).

[²] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[³] For power of Court of Wards to appoint a manager, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 20, *post*, p. 294.

(Sec. 4.)

any estate or revenue-free property or any part thereof, and every person who is in charge of an estate or revenue-free property or any part thereof on behalf of a minor, idiot or lunatic, or on behalf of a religious or charitable foundation^[1][or as a trustee or executor];

(7) “*Mauza*” includes every village, hamlet, *tola* and other Sub-Division of land commonly in use in any district, by whatever name such sub-division may be known;

(8) “proprietor” means every person being in possession of an estate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector;

(9) “recorded proprietor” means any proprietor whose name, and the character and extent of whose interest in an estate or revenue-free property, stand registered in any general register now existing or hereafter to be made under this Act;

(10) “revenue-free property” means any land not subject to the payment of land-revenue which is included under one entry in any part of the general register of revenue-free lands;

(11) “section” means a section of this Act;

(12) “the Board” means the Board of Revenue of the Provinces for the time being subject to the Lieutenant-Governor of Bengal^[2];

(13) “the Collector” means the Collector of the district to which a register relates;

(14) “the district” means the district to which a register relates.

PART II.

OF THE REGISTERS TO BE KEPT UP BY THE COLLECTOR.

4. The Collector of every district shall prepare and keep up the following registers:—

Collector to
keep regis-
ters.

A.—A general register of revenue-paying lands.

B.—A general register of revenue-free lands.

C.—A *mauzawár* register of all lands revenue-paying and revenue-free lands.

[¹] These words in square brackets were added to clause (6), by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 2 (2).

[²] Now the Board of Revenue for Bihar and Orissa.

(Secs. 5-7.)

D.—An intermediate register of changes affecting entries in the general and *mauzawár* registers.

Forms,
language,
character
and arrange-
ment of
registers.

5. The registers shall be written in such forms, languages and character, and shall be arranged in such manner not being inconsistent with the provisions of this Act, as the Board from time to time may direct^[1] for each district.

[²]*

*

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General re-
gister of reve-
nue-paying
lands.

6. The general register of revenue-paying lands shall consist of two parts:—

Part I.—Book of estates borne on the revenue-roll of the district.

Part II.—Book of lands situated in the district appertaining to estates borne on the revenue-rolls of other districts.

Part I of
general regis-
ter.

7. In Part I of the general register of revenue-paying lands shall be entered the name of every estate which is borne on the revenue-roll of the district, and the following particulars relating to every such estate:—

- (a) name of the estate;
- (b) number of the estate on the revenue-roll of the district, and the annual amount of revenue for which it is liable;
- (c) names and addresses of the proprietors, managers and mortgagees of the estate, with the character and extent of the interest of each proprietor, manager and mortgagee;
- (d) name of every local division in which any lands of the estate are situated, whether in the district or in any other district, with specification under each local division of—
 - (i) the number of *mauzas* containing such lands,
 - (ii) the name of each *mauza*,
 - (iii) the number which each *mauza* bears under the local division in the *mauzawár* register, and
 - (iv) the area of land appertaining to the estate which each *mauza* contains, if ascertained by survey or other authentic measurement;

[¹] For a list of orders made under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[²] The second paragraph of s. 5 was repealed, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (a). The said paragraph ran thus:—

“The entries in each Part of the general registers shall be numbered in one consecutive series for the whole district, and shall follow one alphabetical arrangement, running from the beginning to the end of the Part.”

(Secs. 8-9.)

[¹](e) reference to entries made in the intermediate register after the preparation of the general register.

8. In Part II of the general register of revenue-paying lands shall be entered the name of every estate which comprises lands situated in the district but which is borne on the revenue-roll of some other district, and the following particulars relating to every such estate:—

Part II of
general
register.

- (a) name of the estate;
- (b) name of the district on the revenue-roll of which the estate is borne, with the number which the estate bears on that roll, the annual amount of revenue for which it is liable, [²][and the number which the estate bears in Part I of the general register of revenue-paying lands for its own district];
- (c) names and addresses of the proprietors, managers or mortgagees of the estate, with the character and extent of the interest of each proprietor, manager and mortgagee;
- (d) name of every local division of the district to which the register relates, in which any lands of the estate are situated, with a specification under each local division of—
 - (i) the number of *mauzas* containing such lands,
 - (ii) the name of each *mauza*,
 - (iii) the number which each *mauza* bears under the local division in the *mauzawár* register of the district, and
 - (iv) the area of land appertaining to the estate which each *mauza* contains, if ascertained by survey or other authentic measurement;

[¹](e) reference to entries made in the intermediate register after the preparation of the general register.

9. The general register of revenue-free lands shall consist of three parts—

General
register of
revenue-free
lands.†

Part I.—Book of lands held exempt from revenue in perpetuity.

Part II.—Book of lands occupied for public purposes without payment of revenue.

[¹] Clause (e) of s. 7 was repealed by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (2).

[²] These words in square brackets in s. 8 were repealed by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3).

(Sec. 10.)

Part III.—Book of unassessed waste-lands and other lands not included in Part I or Part II of the general register of revenue-free lands.

Part I of
general
register of
revenue-free
lands. †

10. In Part I of general register of revenue-free lands shall be entered

all lands held under *badshahi hukami* and other *lakhiraj* grants which have been declared to be valid by competent authority,

all lands in which the Government has conferred a proprietary title free in perpetuity from any demand on account of land-revenue, in consideration of the payment of a capitalized sum, or for any other reason, and

any lands of which the Board, on a full report of the circumstances of the case, shall have sanctioned the entry in this Part of such register.

Part I of such register shall, as far as possible, contain the following particulars in respect of each entry:—

- (a) name of the revenue-free property, with the character of the tenure, whether *jagir*, *altamgha*, *debottar*, *bishunpirit*, purchased revenue-free, redeemed or otherwise;
- (b) date of the grant or title being conferred;
- (c) nominal area granted;
- (d) names of the grantor and original grantee;
- (e) reference to any decree or other order of competent authority declaring or recognizing the grant to be valid;
- (f) names and addresses of the proprietors and managers of the revenue-free property, with the character and extent of the interest of each proprietor and manager;
- (g) name of every local division in which any land appertaining to the property is situated, whether in the district or in any other district, with specification under each local division of—
 - (i) the number of *mauzas* containing such land,
 - (ii) the name of each *mauza*,
 - (iii) the number which each *mauza* bears under the local division in the *mauzawár* register, and
 - (iv) the area of land appertaining to the revenue-free property which the *mauza* contains if ascertained by

(Secs. 11-12.)

survey or other authentic measurement, with specification of the number of each field according to the papers of such measurement;

- (h) reference to the entries in earlier registers relating to the property or any part thereof;
- (i) reference to entries made in any intermediate register after the preparation of the general register.

11. In Part II of the general register of revenue-free lands shall be entered all lands which are occupied by the Government, or by any public body, for public purposes, and on account of which no land-revenue is demanded. Part II of general register of revenue-free lands.

It shall contain the following particulars:—

- (a) area of the land comprised in each entry;
- (b) names of the local divisions and *mauzas* in which the lands are situated, with area in each *mauza* and a reference to the number under which each *mauza* is entered in the *mauzawár* register of the local division;
- (c) name of the department of Government or of the public body by which the land is occupied;
- (d) the purpose for which it is occupied;
- (e) the date and particulars of the appropriation of the land to such purpose;
- (f) reference to entries in the intermediate register made after the preparation of the general register.

12. In Part III of the general register of revenue-free lands shall be entered all waste and other lands (not being included in any other part of the general register) which are not assessed to land-revenue. It shall contain the following particulars:— Part III of general register of revenue-free lands.

- (a) name and number of the lot, or other particulars identifying the property;
- (b) area comprised in each entry;
- (c) name of every local division and *mauza* in which lands of the property are situated, with area in each *mauza*, and a reference to the local division and number under which each *mauza* is entered under the local division on the *mauzawár* register;
- (d) reference to entries in the intermediate register made after the preparation of the general register.

(Secs. 13-15.)

Board may direct that three last sections shall not apply to any district.

13. If it shall appear to the Board that the circumstances of any district are such,^[1] [or that, in consequence of the preparation of a record-of-rights, or for any other reason, the circumstances of any district or part of a district are so altered,] that it is not desirable or practicable to prepare^[2] [or re-write or maintain] the register of revenue-free lands in the manner described in the three last preceding sections,

the Board may direct^[3] that the said sections shall not apply to such district, and may lay down rules, not being inconsistent with the provisions of this Act, in respect of the registration of revenue-free lands and of the proprietors and managers thereof:

Provided that such rules shall require the registration of the name of one or more persons as liable for the discharge of the duties and obligations referred to in section 68 in respect of all lands which under such rules may be registered as separate revenue-free properties

Such rules, when they shall have been sanctioned by the Lieutenant-Governor and published in the Calcutta Gazette and otherwise locally as the Lieutenant-Governor may order, shall, from such date as the Lieutenant-Governor may direct, have the same force as if they were included in this Act.

Purpose of mauzawár register.

14. The *mauzawár* register shall be kept up for the purpose of showing, in a connected form, the *mauzas* situated in each local division, and the lands, whether revenue-paying or revenue-free, of which each *mauza* consists.

Mauzawár register to be arranged according to local divisions.

15. The *mauzawár* register shall be arranged and divided according to sub-divisions, *parganas*, *thanas*, police-jurisdictions, or such other local divisions of the district as the Board may from time to time direct for each district; the entries of *mauzas* shall have a separate series of consecutive numbers^[4] [for each local division, and shall be so arranged as the Board^[5] may direct.]

[¹] These words in square brackets in s. 13 were inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 3 (1).

[²] These words in square brackets in s. 13 were inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 3 (2).

[³] For a list of orders made under s. 13, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[⁴] These words in square brackets in s. 15 were substituted for the words "and a separate alphabetical arrangement for each local division," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 4.

[⁵] Now the Board of Revenue for Bihar and Orissa; see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 3 and Sch. D, item 10, in Vol. I of this Code.

As the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 16-18.)

The *mauzawár* register shall contain the following particulars:—

- (a) name of the *mauza*;
- (b) total area of *mauza*, if ascertained by survey or other authentic measurement, with a reference to the authority for the entry;
- (c) name of every estate or revenue-free property to which any of the lands of the *mauza* appertain, with a reference to the entry of each on the general register, and a specification of the area of land in the *mauza* which appertains to each, if ascertained by survey or other authentic measurement, with a reference to the authority for such entry;
- (d) gross rental of the area of land in the *mauza* which appertains to each estate or property, if such rental has been ascertained during management of the lands by the Collector or by other authentic means, with a reference to the authority for the entry;
- (e) reference to entries made in intermediate registers after the preparation of the *mauzawár* register.

16. Intermediate registers shall be kept up for the purpose of recording therein from time to time changes affecting the entries which stand in the general and *mauzawár* registers, so that by a reference to them, in connection with those registers, correct information up to date on the points recorded may be obtained at any time; also for the purpose of keeping together, as far as possible, in a convenient form, the information which will eventually be required for re-writing the general and *mauzawár* registers. Intermediate registers.

17. The intermediate register shall consist of two parts, as follows:— Division of intermediate register.

Part I.—Book of changes affecting entries relating to revenue-paying lands.

Part II.—Book of changes affecting entries relating to revenue-free lands.

18. In Part I of the intermediate register shall be recorded, in a convenient form, all changes in the names of proprietors, managers and (so far as this Act requires) mortgagees, and in the character or extent of the interest of each such proprietor, manager and mortgagee, and such other changes affecting any entry standing in the general register of revenue-paying lands, or any entry in the *mauzawár* register relating to revenue-paying lands as cannot conveniently be entered against such Particulars of Part I of intermediate register.

(Secs. 19-19A.)

entry in the general or the *mauzawár* register. It shall contain the following particulars:—

- (a) name of the estate affected, with references to [1][the number it bears on the general register of revenue-paying lands,] the number it bears on the revenue roll, and the amount of revenue for which it is liable;
- (b) references to previous entries in the intermediate register relating to the estate;
- (c) particulars of the change, with a reference to the authority under which it is made;
- (d) the numbers borne by the entries[1][in each Part of the general register of revenue-paying lands, and] under each local division in the *mauzawár* register which are affected by the change here recorded.

Particulars
of Part II of
intermediate
register.

19. In Part II of the intermediate register shall be recorded all changes in the names of proprietors and managers of revenue-free properties, and in the character and extent of interest of each such proprietor and manager, and such other changes affecting any entry standing in the general register of revenue-free lands, or any entry relating to revenue-free lands in the *mauzawár* register, as cannot conveniently be entered against such entry in the general or the *mauzawár* register. It shall contain the following particulars:—

- (a) name and character of the revenue-free property to which the lands appertain, and number which it bears in any part of the register of revenue-free lands;
- (b) reference to previous entries in the intermediate register relating to the property;
- (c) particulars of the change, with a reference to the authority under which it is made;
- (d) the numbers borne by the entries in the general register and under each local division in the *mauzawár* register which are affected by the change here recorded.

Power of
Board to issue
order as to

[2]19A. Notwithstanding anything contained in other sections of this-

[1] These words in square brackets in s. 18, clauses (a) and (d), were repealed by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3).

[2] This s. 19A was inserted, for Eastern Bengal, by the Eastern Bengal and Assam Land Registration (Amendment) Act, 1907 (E. B. and A. Act 1 of 1907), s. 5, in Vol. III of this Code. This Act was extended to Western Bengal by Ben. Act 1 of 1914, s. 4, Sch. II.

(Secs. 19B-20.)

Act, the Board^[1] may from time to time, by written order, direct, in respect of all or any districts,—

- (a) that all matters required by this Act to be entered in the general register of revenue-paying lands and Part I of the intermediate register, respectively, shall be entered in a combined register to be prescribed by the Board, instead of in the aforesaid registers, or
- (b) that all matters required by this Act to be entered in the general register of revenue-paying lands shall be entered in Part I of the intermediate register instead of in the general register of revenue-paying lands, or
- (c) that all matters required by this Act to be entered in Part I of the intermediate register shall be entered in the general register of revenue-paying lands instead of in the intermediate register.

Explanation.—An order issued under this section may merely direct the entry of matters in some register other than that prescribed for the purpose by other sections of the Act. It may not prohibit the record of matters which are required by the Act to be recorded.

[²]19B. All provisions of this Act (other than section 19A) as to the maintenance of registers, as to the entry of matters in any particular register or in any particular Part of any register, and as to other matters relating to registers, shall be read subject to any orders issued by the Board^[1] under section 19A and for the time being in force.

PART III.

OF THE PREPARATION AND MAINTENANCE OF THE REGISTERS.

20. Until the registers by this Act directed to be prepared are so prepared the existing registers now kept up in the office of every Collector shall be deemed to be the registers kept up under this Act, that is to say, the existing general register of revenue-paying estates shall be deemed to be the general register of revenue-paying lands;

the existing *pargana* register (Part II) of revenue-free lands shall be deemed to be the general register of revenue-free lands and the *mauzawár* register in respect of revenue-free lands:

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[²] Section 19B was inserted, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 5, in Vol. III of this Code.

(Secs. 21-24.)

the existing *pargana* register (Part I) of revenue-paying lands shall be deemed to be the *mauzawár* register in respect of revenue-paying lands;

the existing register of intermediate mutations shall be deemed to be the intermediate register of changes affecting entries in the general and *mauzawár* registers;

and all the provisions of this Act shall, as far as possible, be deemed to be applicable to such registers and to the registration therein of the names and interests of proprietors, managers and mortgagees.

How registers
to be pre-
pared.

21. The first general registers and the first *mauzawár* register under this Act shall be prepared for each district at such time as the Board may direct from the entries in the existing registers mentioned in the last preceding section, and from any other authentic information available to the Collector.

Board may
order new
registers to
be prepared.

22. The Board may order new registers to be prepared whenever it may think fit, and such registers shall be prepared from the registers existing at the time of such order, and from the entries of subsequent changes in the intermediate registers, and from any other authentic information available to the Collector; and such additions to, omissions from, and alterations in, the entries as they appeared in the previous registers shall be made as subsequent changes have rendered necessary, and the authority for every change shall be expressly referred to.

Entry of
estate on
Part of
general
register.

23. Whenever, after the preparation of the general registers, it may be necessary to bring any estate or revenue-free property on to any Part of such registers on which such estate or property is not already borne, such estate or property shall be at once brought on to such Part under a new number in continuation of the last number already borne on such Part;

[¹]* * * * *

Entry of
mauza under
local division
of *mauzawár*
register.

24. Whenever, after the preparation of the *mauzawár* register, it shall be necessary to enter any *mauza* under any local division of such register under which it is not already borne, such *mauza* shall be at once brought under the proper local division with a new number in continuation of the number borne by the last entry under such local division; and a note referring to such entry shall be made in the place in the

[¹] The words and figures "and a note referring to such entry shall be made in the place in the general register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in s. 5" were repealed, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (b).

(Secs. 25-27.)

mauzawár register in which such estate or property would have appeared according to [¹][the arrangement directed under section 15].

25. (*Order of entries under two preceding sections*). *Rep., by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (c).*

26. After the general register of revenue-paying lands shall have been prepared, a note shall from time to time be made on such register against the estate affected—

Note to be made on general register.

of every alteration which may be ordered by competent authority in the amount of revenue assessed on any estate;

of every partition of an estate into two or more estates;

of every change involving the removal of an estate from the part of the register on which it is borne;

of the redemption of every mortgage in respect of which the name of the mortgagee shall have been entered on the register;

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand in the register may be recorded in Part I of the intermediate register, as provided in section 18, and a reference shall be made in the general register against the estate affected to every entry which may be made in the intermediate registers recording any such change.

27. After the general register of revenue-free lands shall have been prepared, a note shall from time to time be made on such register against the property affected—

Note on general register of revenue-free lands.

of every case in which lands entered as revenue-free may be declared liable to assessment, and assessed by competent authority;

of every partition of a revenue-free property into two or more properties;

of every change involving the removal of a revenue-free property from the part of the register on which it is borne;

[¹] These words in square brackets in s. 24 were substituted for the words "the alphabetical arrangement mentioned in s. 15," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 6, in Vol. III of this Code.

(Secs. 28-30.)

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand on the register may be recorded in Part II of the intermediate register as provided in section 19.

Collector,
after inquiry,
may make
change in
register.

28. Whenever it shall come to the notice of the Collector that any change has occurred which affects any entry in his registers, and renders necessary any alteration therein, the Collector, after making such inquiry as may be necessary, shall make such alteration :

Provided that notice shall be given to the recorded proprietors and managers of any estate or revenue-free property before any change is made in any way affecting such estate or property, and to every person whose name the Collector is about to register as proprietor or manager of any estate or revenue-free property, before such registration is affected ; and any objections, which may be made to the proposed change or registration shall be duly considered by the Collector before he orders such change or registration to be made.

[¹][The notice required under this section shall be served in the manner prescribed by section 50.]

When
Collector may
order name of
proprietor to
be struck out
of register.

29. Whenever it shall appear to the Collector, in the course of an inquiry made in respect of an application under section 38 or section 42 or otherwise that any person whose name is recorded in the general register as proprietor or manager, or joint-proprietor or joint-manager, of an estate or revenue-free property, is no longer in possession of any interest in such estate or property as proprietor or manager, and that the names of other persons have been recorded as proprietors or managers of every portion of the interest in respect of which such proprietor's or manager's name was borne on the register,

the Collector may order the name of such person to be struck out from among the recorded proprietors or managers of such estate or property and, if required, may grant him a certificate to that effect.

Information
to be supplied
to Collector.

30. To enable the Collector more effectually to maintain his registers,—

(a) whenever any competent authority may direct that any estate be transferred from the revenue-roll of one district to that of another, the Collector of the district from the revenue-roll of which the estate is to be

[¹] These words in square brackets were added to s. 28 by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 7, in Vol. III of this Code.

(Sec. 31.)

transferred shall transmit to the Collector of the district to the revenue-roll of which the transfer is to be made a copy of all entries in any of the registers relating to the estate to be so transferred, and entries taken from such copy shall be made in the proper registers of the district to which the transfer is made;

(b) whenever the Collector of any district shall make an entry, or any alteration of any entry, in his registers, which will affect any entry required to be made under this Act in any register of another district, such Collector shall transmit to the Collector of such other district copy of such entry as made or as altered, and the Collector to whom such copy is transmitted shall cause the necessary entries, or alteration of entries, to be made in the registers of his district;

(c) every proprietor and manager of an estate or revenue free property in which any new village may be established, whether under the name of tola, *Kismat* or any other designation, shall forthwith give notice to the Collector of the establishment of such new village:

Provided that the Board may exempt any district, or part of a district from the operation of the clause;

(d) every proprietor and manager of an estate or revenue-free property, and any person holding any interest in land, or employed in the management of land, shall be bound, on the requisition of the Collector,

to furnish any information required by the Collector for the purpose of preparing, making or correcting any entry of particulars specified in ss. 7, 8, 10, 11, 12 or 15, or

to show to the satisfaction of the Collector that it is not in his power to furnish the required information.

Such requisition shall be made by a notice to be served in the manner prescribed by section 50, requiring the production of such information before a date mentioned in such notice.

[¹](e) whenever any minor, disqualified proprietor or other beneficiary, whose name has been recorded in any register along with that of a guardian or manager, lawfully assumes direct charge of his estate, he shall within six months give notice to the Collector and apply for correction of the register by removal therefrom of the name of such guardian or manager.

31. Whoever, being bound by clause (c) of the last preceding section, to give notice to the Collector of the establishment of any new village, or under clause (d) of the said section to furnish any information required

Penalties for
not giving
notice or
furnishing
information.

[¹] This clause (e) was added to s. 30 by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 8, in Vol. III of this Code.

(Secs. 32-33.)

by the Collector, [¹][or under clause (e) of the said section to give notice of his having assumed direct charge of an estate], shall voluntarily or negligently omit to give such notice or furnish such information, or to show to the satisfaction of the Collector that it is not in his power to furnish such information,

shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission ;

and the Collector may impose such further daily fine as he may think proper, not exceeding fifty rupees, for each day during which such person shall omit to furnish the information required under clause (d) after a date to be fixed by the Collector in a notice warning the person required to furnish such information that such further daily fine will be imposed.

Such notice shall be served in the manner prescribed by section 50, and the date fixed by such notice shall not be less than 15 days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending :

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

When
register
may be
altered on
order of
Civil Court.

32. Whenever any Civil Court makes a decree confirming any transfer of proprietary possession which has already been made in any estate or revenue-free property, or gives effect to any decree transferring any such possession, such Court may order the transfer to be registered in the registers of the Collector, and the Collector shall register such transfer accordingly.

Lands held
without
payment
of rent
deemed to
be part
of certain
estates.

33. All lands which are held without payment of rent, not being a revenue-free property entered in the general register of revenue-free lands as prescribed by sections 10, 11 or 12, and not being a part of any such property, shall, for the purposes of this Act, be deemed to be a part of the estate within the local boundaries of which they are included; and, if they are not included within the local boundaries of any one estate, then to be a part of such neighbouring estate as the Collector shall, by an order under his seal and signature, declare.

[¹] These words in square brackets were inserted in s. 31, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 9, in Vol III of this Code.

(Secs. 34-35.)

34. Whenever it shall appear to the Collector that any lands which are not included in any estate as entered in the existing general register should be included in any such estate for the purposes of this Act, the Collector shall cause a notice, addressed to the person who is believed to be in possession of such lands, to be served in the manner prescribed by section 50, and a general notice to be published, as prescribed by section 49, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may think fit to allow.

Collector may include any lands in an estate.

After the expiration of the said month or other period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said estate for the purposes of this Act.

35. Whenever it shall appear to the Collector that any land which is not entered on the general register as a separate revenue-free property should be entered on the register as such property, he may cause a notice to be served in the manner prescribed by section 50, calling on the person in possession of such land as proprietor or manager to show cause why such land should not be so registered as a revenue-free property;

Collector may register lands as a revenue-free estate and call on proprietor to apply for registration.

and if, after hearing any objections (which may be preferred within a month of the service of the said notice, or such longer period as the Collector may think fit to allow), and after making such further inquiry as may be necessary, the Collector shall be of opinion that the land should be so registered, he shall enter such land on the general register as a revenue-free property;

and by a notice served as prescribed in section 50, as well as by general notice published as prescribed in section 49, shall require every proprietor and manager of such revenue-free property to apply for registration of his name and of the character and extent of his interest as such proprietor or manager;

and thereupon every such proprietor and manager shall be deemed, for the purposes of section 68, to be a person who is required by this Act to apply for the registration of his name; and all the provisions of Part IV of this Act, so far as may be practicable, shall apply to every such person :

Provided that no such proprietor or manager shall be liable to any fine under section 65 until after the expiration of three months from the date on which the last-mentioned notice shall have been served :

Provided, also, that no land shall be entered as a revenue-free property in Part I of the general register of revenue-free lands until the

(Secs. 36-38.)

circumstances of the case shall have been reported to the Board^[1], and until the Board^[1] shall have sanctioned such entry.

Board to decide what lands to be included in each revenue-free property.

36. The Board^[1] may decide what revenue-free lands shall be included in each revenue-free property to be registered as such under this Act, and may from time to time direct that lands which are borne on the register as forming one revenue-free property shall be divided and entered on the register as forming two or more such properties; and may similarly direct that revenue-free lands which are borne on the register as forming two or more revenue-free properties shall be united and entered as forming one revenue-free property.

The Board^[1] may also direct that any lands which are improperly borne upon the general register of revenue-free lands shall be removed from such register, or shall be omitted from any new register of such lands which may be prepared.

Collector may serve notice for inclusion of lands in revenue-free property.

37. Whenever it shall appear to the Collector that any land which is not included in any revenue-free property entered in the existing general register should be included in any such property for the purposes of this Act, the Collector may cause a notice to be served on the person believed to be in possession of such lands in the manner prescribed by section 50, and a general notice, to be published as prescribed by section 49, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may allow.

At the expiration of the said month or of such period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said property for the purposes of this Act.

PART IV.

OF THE REGISTRATION AND MUTATION OF NAMES.

Proprietor and manager to register within specified time.

[²38.] *Every proprietor of an estate or revenue-free property or of any interest therein, respectively, being in possession of such estate, property, or interest at the commencement of this Act,*^[3]

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[2] Sections 38 to 40 are obsolete.

^[3] i.e., the 23rd August 1876.

(Secs. 39-40.)

every joint proprietor of an estate or revenue-free property being in charge of such estate or property or of any interest therein, respectively, on behalf of the other proprietors thereof, at the commencement of this Act, [1]

and every person being manager of an estate or revenue-free property, or of any interest therein, respectively, on behalf of a proprietor thereof, at the commencement of this Act, [1]

shall, if his name and the character and extent of his interest have not already been registered, make application, in the manner hereinafter provided, for the registration of his name and of the character and extent of his interest as such proprietor or manager to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by the Collector to receive such application within such time as the Lieutenant-Governor may fix as hereinafter provided.

[2]39. The Lieutenant-Governor shall, within six months from the commencement of this Act, [1] fix [3] for each district the date or dates before which such proprietors and managers, being in possession of estates or revenue-free properties, or of any interest therein, respectively, at the commencement of this Act, [1] shall be required to apply for registration of their names and of the character and extent of their interests, under the last preceding section; and may at any time alter any date so fixed, provided that no date so fixed shall be later than five years after the said commencement.

[2]40. The Lieutenant-Governor may in any district, for the purposes of the last preceding section, fix [3] different dates in respect of estates and revenue-free properties, or in respect of different classes of estates and revenue-free properties, or in respect of different portions of the district:

Provided that no person shall incur any penalty or disability under this Act for failure to apply for registration of his name as such proprietor or manager as aforesaid until after the lapse of six months from the date on which the notice prescribed by the next succeeding section shall have been published in respect of his estate or property, or in respect of the class of estates or revenue-free properties within which his estate or property falls, or in respect of the portion of the district in which his estate or revenue-free property is situated.

[1] i.e., the 23rd August 1876.

[2] Sections 38 to 40 are obsolete.

[3] For orders made under ss. 39 and 40, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 41-42.)

Publication of date fixed by Lieutenant-Governor.

[¹]41. Every date fixed by the Lieutenant-Governor as provided in the two last preceding sections shall be published by a notice in the *Calcutta Gazette*;

and also by notices to be posted up

at the Court or office of the Judge, the Magistrate and the Collector of the district, in respect of which such date is fixed;

at the Court or office of every Munsif, Sub-divisional Officer and Sub-Registrar of Assurances in such district;

and at every police-station in such district;

and by proclamation to be made by beat of drum at the head-quarters of such district, and in every place in which a Sub-divisional office is situated, and in such other places as the Lieutenant-Governor may direct.

The officer in charge of every Court, office and police-station at which a notice is required to be posted up under this section shall certify to the Collector the date on which the notice was so posted up at his Court, office or police-station; and the latest date so certified shall be deemed to be the date of publication of the notice for the purposes of the two last preceding sections.

Person succeeding to proprietary right in, or management of, estates to give information within six months.

42. Every person succeeding, after the commencement of this Act^[2], to any proprietary right in any estate or revenue-free property, whether by purchase, inheritance, gift or otherwise;

every joint proprietor of an estate or revenue-free property assuming charge after such commencement of such estate or property, or of any interest therein respectively, on behalf of the other proprietors thereof;

and every person assuming charge after such commencement of any estate or revenue-free property, or of any interest therein respectively as manager,

shall, within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration of his name and of the character and extent of his interest as such proprietor or manager.

[¹] Section 41 is obsolete.

[²] i.e., the 23rd August, 1876.

(Secs. 43-48.)

43. Notwithstanding anything contained in section 38 or the last preceeding section, the Lieutenant-Governor may in any district exempt proprietors and managers of all or any estates which are liable to pay less than twenty rupees of land revenue annually, and proprietors and managers of all or any revenue-free properties which consist of less than fifty acres of land from the obligations imposed by this Act in respect of applying for registration of their names, and may at any future time withdraw such exemption and require such proprietors and managers to register their names.

44. Every person who holds a mortgage of any proprietary right in any estate may apply to the Collector for registration of his name as such mortgagee, and of the interest in respect of which he is such mortgagee, and in such application shall specify whether he or the mortgagor is in possession. On receipt of such application the Collector shall proceed, as far as possible, according to the manner hereinafter prescribed in respect of applications for registration as proprietor.

45. Any application for registration under this Act may be presented by the applicant or by some person duly authorized by him in that behalf.

46. If the applicant under section 38 or section 42 is a joint proprietor in charge as aforesaid, or a manager, he shall in his application specify the name of the person or persons on behalf of whom he is in such charge, or on behalf of whom he is manager, and the character and extent of the interest of every such person.

47. If the application under section 38 or section 42 be for registration of the name of the applicant as manager appointed by the Collector, the Court of Wards,^[1] or by any Civil or Criminal Court, the Collector shall register the name of the applicant on proof being produced to his satisfaction that the applicant has been so appointed to be such manager.

48. If the application be for registration otherwise than as manager appointed as mentioned in the last preceding section, and if it sets forth circumstances which would justify the Collector in registering the name of the person whose name is required to be registered, or if after further inquiry the Collector considers that such circumstances exist, he shall issue a notice requiring all persons who object to the registration of the name of the person whose name is required to be registered, or who dispute the character or extent of the interest in respect of which it is required to be registered, to give in a written statement of their objec-

^[1] For power of Court of Wards to appoint a manager, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 20, *post*, p. 294.

(Secs. 49-52.)

tions, and to appear on a day to be specified in such notice, not being less than one month from the date of the publication thereof.

Publication
of notice.

49. Such notice shall be published by affixing a copy of the same on or at all the following places:—

- (a) the *zaminadari cutcherry* (if any) of the estate or other place at which the rents are ordinarily received;
- (b) some conspicuous place in at least one village appertaining to the estate to which, the application relates, and if the estate comprises lands situated in more than one local division, then in at least one village in each local division containing such lands;
- (c) the office or Court of every Collector, Sub-divisional Officer, Judge and *Munsif* within whose jurisdiction, and every police-station within the jurisdiction of which any of the lands to which the application relates are known to be situated.

Notice to
transferor.

50. If the application alleges that the applicant has acquired possession of the interest in respect of which he applies to be registered by transfer from any living person, a copy of such notice shall be served on the alleged transferor by tendering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, or to some adult male member of his family; or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

No fees or other costs shall be payable by the applicant in respect of the service or publication of the notice prescribed by this and the last preceding section.

Effect of
irregularity
in publication
or service of
notice.

51. No irregularity or omission in the publication or service of notice as required by the three last preceding sections shall affect the validity of any proceedings under this Act, unless it is proved to the satisfaction of the Collector that some material injury was caused by such irregularity or omission.

Inquiry by
Collector.

52. On the day fixed in the notice issued under section 48, or as soon thereafter as possible, the Collector shall consider any objections which may be advanced, and make such further inquiry as appears necessary

(Secs. 53-54.)

to ascertain the truth of the alleged possession of, succession to, or transfer of, the estate, revenue-free property, or interest therein, in respect of which registration is applied for;

and if it appears to the Collector that the possession exists,

or that the succession or transfer has taken place, and that the applicant has acquired possession in accordance with such succession or transfer,

but not otherwise,

the Collector shall order the name of the applicant to be registered in the proper registers as proprietor or manager of the said estate, revenue-free property or interest therein :

Provided that any person to whom any proprietary right in an estate has been mortgaged may be registered as mortgagee, whether he be in actual possession or otherwise.

53. For the purpose of the inquiry mentioned in the last preceding section, and of every inquiry held under this Act, the Collector may summon and enforce the attendance of witnesses^[1] and any applicant or his agent] and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided^[2] [in respect of witnesses] by the Code of Civil Procedure.^[3]

Power to
summon
witnesses
and compel
production
of docu-
ments.

23 of 1861.

^[4]**53A.** The evidence of every person examined by the Collector in any inquiry from which an appeal lies under this Act shall be recorded in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure.^[5]

Record of
evidence in
inquiries.

14 of 1882.

54. All costs of any inquiry or proceeding held before the Collector under this Act shall, except as provided in section 50, be payable by the parties concerned; and the Collector may pass such orders as he shall think fit in respect of the payment of such costs.

Payment of
costs.

[¹] These words in square brackets in s. 53 were inserted, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 1906), s. 10 (a), in Vol. III of this Code.

[²] These words in square brackets in s. 53 were substituted for the words "in the case of a Civil Court," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 10 (b), in Vol. III of this Code.

[³] Act 23 of 1861 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

[⁴] Section 53A was inserted, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 11, in Vol. III of this Code.

[⁵] Act 14 of 1882 was repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in General Acts, 1904-1909, Ed. 1909, p. 184.

(Secs. 55-57.)

Dispute as to possession, succession or acquisition by transfer.

55. [¹][If the applicant's possession of, succession to, or acquisition by transfer of, the extent of interest in respect of which he has applied to be registered is disputed by, or on behalf of, any person making a conflicting claim in respect thereof, and if it is not proved to the satisfaction of the Collector that any person is in possession of the interest in dispute, the Collector shall determine summarily the right to possession of the same, and shall deliver possession accordingly, and shall make the necessary entry in the registers;]

or if, in the opinion of the Collector, the dispute be one which can more properly be determined by a Civil Court, the Collector shall refer the matter in dispute to the principal Civil Court of the district for determination as hereinafter provided:

Provided that if the applicant's possession of any extent of interest in accordance with his application be not disputed, or if such possession be proved to the satisfaction of the Collector, the Collector may register the said applicant's name in respect of such extent of interest, and may at the same time make a reference, as hereinafter provided, to the Civil Court for determination of any dispute as to any further extent of interest in respect of which the applicant has applied to be registered, but in respect of which the right of the applicant to be registered is disputed, and is not proved to the satisfaction of the Collector.

In cases of disputed possession, etc., Collector may appoint receiver.

56. In any case of disputed possession of, succession to, or acquisition by transfer of, the extent of any interest in respect of which application is made under the last preceding section, the Collector may appoint a receiver to collect the rents of the extent of interest in dispute, and from the sums so collected shall be paid the expenses of management and the revenue due to the Government; and the surplus shall be held in deposit in the Collector's treasury, and shall be paid over to the person who shall be registered by the Collector, or, under the order of a Civil Court, in respect of the extent of interest in dispute.

Effect of Collector's order.

57. Every order of a Collector passed under the first clause of section 55 shall be of the same force and effect as an order passed by the Judge under section 4 of Act 19 of 1841[²] (*an Act for the protection of movable and immovable property against wrongful possession in cases of succession*), determining summarily the right to possession and delivering possession accordingly;

[¹] This clause in square brackets in s. 55 was substituted for the original clause by the Bengal Land Registration (Amendment) Act, 1878 (Ben. Act 5 of 1878), *post*, p. 271.

[²] The Succession (Property Protection) Act, 1841. It is printed in General Acts, 1834-67, Ed., 1909, p. 37.

(Secs. 58-61.)

and no proceedings shall be taken by any Civil Court under the said Act in respect of any claim or dispute which has been determined by an order of the Collector as aforesaid.

58. In making a reference to the Civil Court under section 55, the Collector shall state, for the information of the said Court, in writing under his hand,— Procedure on reference under section 55.

- (1) the name of the estate or revenue-free property to which the reference applies, together with the numbers which it bears on the general register and (if an estate) on the revenue-roll of the district;
- (2) the names of all the persons who now stand registered on the general register as proprietors, managers or mortgagees of such estate or property, with the character and extent of the interest in respect of which each stands registered;
- (3) the name of the applicant for registry;
- (4) the character and extent of the interest in dispute;
- (5) the circumstances of the case, as far as they are before the Collector, and the reasons which have led him to make the reference.

59. On receipt of such reference the said principal Civil Court of the district may either proceed to determine the matter or may transfer the matter for determination to any other competent Civil Court in the district. Procedure on receipt of reference.

The said principal Civil Court, or the Court to which the matter is transferred, shall cite the parties concerned, and give notice of the time at which the matter will be heard and, after expiration of the time so fixed, shall determine summarily the right to possession in respect of the interest in dispute (subject to regular suit), and shall deliver possession accordingly.

60. If it shall appear to the Judge of the Court by which the matter is heard that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, such Judge may appoint curators for the care of the property, and may exercise all or any of the powers mentioned in sections 5 to 13 (both inclusive) of Act 19 of 1841.^[1] Judge may appoint curator.

61. The said Court may make such order as it shall think fit with regard to the payment by the parties of the cost of the inquiry and proceedings: Costs.

^[1] The Succession (Property Protection) Act, 1841. It is printed in General Acts, 1834-67, Ed. 1909, p. 37.

(Secs. 62-64.)

Provided that no costs shall be recoverable from the parties on account of the issue of notices citing the parties and fixing a date for the first hearing of the case.

Effect of
summary
decision of
Court.

62. The summary decision of the Court under section 59 shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

Court to cer-
tify its deter-
mination to
Collector.

63. The Court shall certify to the Collector its determination as to the right of possession, and the Collector shall thereupon make the necessary entries in the proper registers.

Collector to
levy fees on
transfers.

64. Fees at the following rates shall be levied by the Collector on the registry under this Act of any transfer—

- (1) in the case of revenue-paying lands, one quarter or four annas *per centum* on the annual revenue payable to Government from the extent of interest transferred;
- (2) in the case of revenue-free lands, two-and-a-half *per centum* on the amount of the annual produce of the extent of interest transferred, such annual produce being the amount of the rents received and receivable on account of the year preceding the year in which the transfer may be registered;
- [¹](3) in the case of a fee-simple waste-land lot which is revenue-free, and for which no rents are received or receivable, two-and-a-half *per centum* on one-fifteenth part of the value, such value being taken to be—
 - (a) in the case of a transfer by sale, the purchase-money, and,
 - (b) in any other case, the value determined by the Collector:]

Provided that no fee for the registry of any one transfer shall exceed one hundred rupees.

[²][Provided also that the Board[³] may, by general or special order, remit the payment of fees payable for any transfer.]

Such fees shall be levied from the person in whose favour the transfer is registered.

[¹] Clause (3) was inserted, in s. 64, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 12 (1), in Vol. III of this Code.

[²] This proviso was inserted, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 12 (2), in Vol. III of this Code.

[³] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 65-68.)

All fees levied under this section shall be carried to the account of Government.

65. Whoever, being required by this Act to apply for the registration of his name and the extent of his interest in any estate or revenue-free property voluntarily or negligently omits to make such application within the prescribed time, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees for such omission, and to such further daily fine as the Collector may think fit to impose, not exceeding fifty rupees, for each day during which such person shall omit to apply for such registration after a date to be fixed by the Collector in a notice requiring such person to apply for registration.

Penalty for omitting to comply with Act.

Such notice shall be served in the manner prescribed in section 50, and the date before which such person is required to apply for registration shall not be less than one month after service of such notice.

66. The Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending:

Fine may be levied notwithstanding appeal.

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

67. Notwithstanding anything contained in section 65, no fine shall be imposed by the Collector under the said section on any person on the ground that such person has failed to make application for registration of his name within the time fixed by the Lieutenant-Governor under section 39 or 40,

No penalty on person who applies *suo motu*.

or on the ground that such person has failed to apply for registration of his name within the time prescribed by section 42,

if such person shall, at any time after the expiration of the time fixed or prescribed as aforesaid, of his own motion, and otherwise than after the issue of a requisition by the Collector in that behalf, present such application as is required by this Act for the registration of his name and of the character and extent of his interest.

68. Save as is provided in section 90 of the Code of Criminal Procedure,^[1] all the recorded proprietors and managers of an estate or revenue-free property shall be deemed to be jointly and severally liable

Liabilities of proprietors and managers.

[¹] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to s. 45 of that Code—see s. 3 thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 69-70.)

for the discharge of any duties and obligations which are, by any law for the time being in force, imposed upon the proprietors of such estate or property;

and all persons who are required by this Act to apply for registration shall, from the date on which the obligation so to register is imposed on them respectively by this Act, be deemed to be liable for the discharge of any duties and obligations which are by any such law as aforesaid imposed upon the proprietors of the estate or property in respect of which they are required to apply for registration respectively.

PART V.

OF THE OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

Opening of
separate
account of
share of
applicant
under Act II
of 1859.

69. Notwithstanding anything contained in Act 11 of 1859^[1] (*an Act to improve the law relating to sales of land, etc.*), from the commencement of this Act^[2] no separate account shall be opened under the provisions of section 10 or of section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

Proprietor
holding
undivided
interest
in specific
lands may
apply for
separate
account.

^[3]**70.** When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the Government revenue which is due in respect of such interest, he may submit to the Collector a written application to that effect.

The application must contain a specification of the land in which he holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest.

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[2] i.e., the 23rd August, 1876.

^[3] As to the protection from sale of shares of estates for which a separate account has been opened under s. 70, and which are under the charge of the Court of Wards, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), Part III, *post*, p. 310.

As to separate liability for payment of road cess and public works cess when a separate account has been opened under s. 70, see the Cess Act, 1880 (Ben. Act 9 of 1880), s. 44, *post*, p. 394.

As to separate liability for payment of sums due under the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), when a separate account has been opened under s. 70 of the present Act, see ss. 71 and 72 of the Act of 1882, *post*, pp. 460 and 461.

(Secs. 71-72.)

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act 11 of 1859.^[1]

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

II of 1859. [2][Notwithstanding anything hereinbefore contained, no application under this section or under section 10 or section 11 of the Bengal Land-revenue Sales Act, 1859,^[1] shall be received unless it is accompanied by a fee of two rupees.]

71. Section 12 of the said Act 11 of 1859^[1] shall apply to every application made under the last preceding section; and the effect and consequences of opening a separate account under the last preceding section shall be such and the same as are described in section 13 and in section 14 of Act 11 of 1859.^[1] Sections 12, 13 and 14 of Act II of 1859 applied.

72. Whenever any share in respect of which a separate account has been opened by the Collector under section 10 or section 11 of the said Act 11 of 1859,^[1] or under section 70, shall no longer correspond with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers, Application to close separate account.

any proprietor or manager whose name is borne on the general register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application,

setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager, or jointly by two or more recorded proprietors or managers,

and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate,

and praying that the separate account standing open in respect of such share shall be closed,

and, if he so desire, praying that another separate account be opened in respect of any other share or shares which were wholly or partly

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[2] This paragraph was added to s. 70, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 13, in Vol. III of this Code.

(Secs. 73-74.)

included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been open under section 10 of Act 11 of 1859^[1] for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas shares being kept jointly in the names of the remaining proprietors C, D and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the 7 annas share which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows:—

X	.	.	.	.	.	.	.	9 annas.
B	.	.	.	.	.	.	.	3 „
D & E	.	.	.	.	.	.	.	4 „

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share and also the separate account which is open in respect of B's 5 annas share, but as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate;

and in the same application X may apply for the opening of a separate account in respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

Separate
account may
be closed
and another
opened.

73. On receipt of such application the Collector shall cause a copy of the same to be published in the manner provided in section 10 of Act 11 of 1859^[1]; and if within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him under section 10 or section 11 of Act 11 of 1859^[1] or under section 70, as the case may be.

Procedure in
case of
objection.

74. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the share in respect of which any separate account is open as aforesaid has not been broken up, and does still correspond with the character and extent of interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof.

[¹] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Secs. 74A-77.)

the Collector shall refer the parties to the Civil Court, and shall suspend proceedings until the question at issue is judicially determined.

[¹]74A. Notwithstanding anything contained in the foregoing sections, if the Collector becomes aware, otherwise than after receipt of an application under section 72, that any separate account opened under section 10 or section 11 of the Bengal Land-revenue Sales Act, 1859, [²] or under section 70 or section 72 of this Act, in respect of any estate does not represent existing facts, he may, after service of a notice on the recorded proprietor in the manner prescribed by section 50, and after hearing any objection which may be preferred, close the account.

Power of Collector to close a separate account otherwise than upon application.

11 of 1859.

PART VI.

MISCELLANEOUS.

75. The Collector shall supply an extract from any register mentioned in this Act to any person who may apply for the same, subject to the payment of such fees for searching and copying as may be prescribed by the Board.^[3]

Collector to furnish extract from register.

76. If in any district any register prescribed by this Act has not been prepared and kept up in the vernacular language and character of the district, the Collector shall be bound, together with any English extract which may be furnished under the last preceding section, to furnish a translation of the same in the vernacular language and written in the vernacular character of such district to any one who may demand such translation, and no further charge shall be made in respect of the furnishing of such translation than might have been charged in respect of the English extract furnished under the said section.

Collector to furnish translation of extract.

77. Whenever any change shall be made by order of competent authority in the names of the recorded proprietors or managers of any estate or revenue-free property, or in the character or extent of the interest of any such proprietor or manager as entered in any register mentioned in this Act, so soon as the order under which such change in the entry may have been made shall have been confirmed on appeal, or

Changes in names of proprietors, etc., and extent of interest to be notified on estate.

[¹] Section 74A was inserted, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 14, in Vol. III of this Code.

[²] The Bengal Land-revenue Sales Act, 1859 (11 of 1859). It is printed in Vol. I of this Code.

[³] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 78-80.)

so soon as the period for presenting an appeal against such order shall have expired without the presentation of an appeal, the Collector shall cause a notice of such change to be posted up at his office, at the office of every Sub-divisional Officer within whose jurisdiction any lands of the estate or revenue-free property concerned are situated, and at such places as he may think fit on the estate or property;

and every such notice shall set out the name of every proprietor and manager of the estate or revenue-free property [1][who is] concerned, and the character and extent of the interest of every such proprietor and manager as it stands recorded on the general register on the date of the issue of the notice.

No person bound to pay rent to claimant not registered.

78. No person shall be bound to pay rent to any person claiming such rent as proprietor or manager of an estate or revenue-free property in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

Payment to each to several proprietors, etc., holding in common tenancy.

and no person being liable to pay rent to two or more such proprietors, managers or mortgagees holding in common tenancy shall be bound to pay to any one such proprietor, manager or mortgagee more than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager or mortgagee is registered bears to the entire estate or revenue-free property.

Indemnity to persons paying rent to registered proprietor.

79. The receipt of any proprietor, manager or mortgagee whose name and the extent of whose interest is registered under this Act shall afford full indemnity to any person paying rent to such proprietor, manager or mortgagee.

Payment of sums payable by Collector to proprietors jointly.

80. Whenever any sum of money shall be payable by the Collector to the proprietors of any estate or revenue-free property jointly (otherwise than under the Land Acquisition Act 1870^[2]), the Collector may ^{10 of 1870,} pay to any one or more recorded proprietors or managers thereof respectively such portion of the said sum as may be proportionate to the extent of the interest in respect of which each such proprietor or manager is registered, and the receipt of each such proprietor or manager shall afford full indemnity to the Collector in respect of any sum so paid.

[1] These words "who is" were inserted in s. 77, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 15, in Vol. III of this Code.

[2] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 81-85.)

81. Nothing contained in the three last preceding sections shall be held to interfere with the conditions of any written contract, or to prevent any person deeming himself entitled to any sum of money from recovering such sum by due process of law from any other person who has received the same.

Saving of written contracts and recovery from person receiving money.

82. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred, of any fees payable, of any notices served, of any costs payable by any party, or of any fines imposed, shall be deemed to be a demand * * * * *^[1].

Every amount due deemed to be a demand.

83. The Collector may by a notice require the proprietor or manager of any estate or revenue-free property to name such estate or property by a distinctive name, and in case of failure of such proprietor or manager to comply with the requisition within the time fixed by the Collector may name such estate or property.

Collector may require proprietor to name estate.

^[2][The notice required under this section shall be served in the manner prescribed in section 50.]

84. The Collector may, by a special or a general order, delegate to any Assistant Collector, Deputy Collector or Sub-Deputy Collector, the performance of any duty, and the exercise of any function, which the Collector is required or empowered to perform or exercise under this Act, except in respect of appeals,

Collector may delegate duties.

and any Assistant, Deputy or Sub-Deputy Collector to whom any duty or function is so delegated may exercise all the powers of a Collector under this Act, except in respect of appeals.

85. Every order passed under this Act by any revenue officer below the rank of the Collector of the district (not being an officer specially vested with appellate powers as hereinafter mentioned) shall be appealable to the Collector of the district, or to any officer who may have been specially vested by the Government with special appellate powers in this behalf,

Appeal.

and there shall be no further appeal from any order so passed in appeal confirming the order appealed against,

but an appeal shall lie to the Commissioner of the Division against every order so passed in appeal which modifies or reverses the order appealed against.

^[1] The reference to the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), and is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

^[2] These words in square brackets were added to s. 83, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 7, in Vol. III of this Code.

(Secs. 86-88.)

Every order passed by the Collector of the district, or by any officer especially vested with appellate powers as aforesaid, being passed otherwise than on appeal from the order of another officer, shall be appealable to the Commissioner of the Division.

Every appeal to the Collector shall be presented within fifteen days of the date of the order appealed against;

and every appeal to the Commissioner shall be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the order appealed against;

and every appeal presented after the lapse of the time fixed by this section may be summarily rejected, unless sufficient cause shall be shown to the satisfaction of the appellate authority for admitting the appeal after the lapse of such time.

Every order passed by any officer subordinate to a Commissioner shall be subject at any time to revision and modification by such Commissioner;

and every order passed by any such officer or by such Commissioner shall be subject at any time to revision and modification by the Board.^[1]

Exclusion of time in case of appeals.

86. In computing the period of limitation prescribed for an appeal, the day on which the order complained of was made, and the time requisite for obtaining a copy of the same shall be excluded.

Lieutenant-Governor may vest officer with special appellate powers.

87. The Lieutenant-Governor may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act; and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

Board may make certain rules.

88. Within four months of the date,^[2] on which this Act comes into force the Board^[1] shall make general rules,^[3] consistent with this Act, to regulate—

the form in which registers under this Act are to be kept;

the procedure as to the presentation, admission and verification of applications for registration under Part IV, and as to inquiries under section 52,

and generally for the purposes of this Act.

The Board^[1] may from time to time cancel or alter any such rules.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[2] i.e., the 23rd August, 1876.

^[3] For a list of forms prescribed under s. 88, and for rules made under that section, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Sec. 89.)

89. Nothing contained in this Act and nothing done in accordance with this Act, shall be deemed to— Saving clause.

- (a) preclude any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which he may deem himself entitled;
- (b) render the entry of any land in the registers under this Act as revenue-free an admission on the part of Government of the right of the person in whose name such land may be entered, or an admission of the validity of the title under which the said land is held revenue-free;
- (c) affect the rights of the Government or of any person in respect of any immovable property or of any interest, except as otherwise expressly provided herein.

SCHEDULE OF REGULATIONS REPEALED.

Rep. by the Amending Act, 1903 (1 of 1903).

BENGAL ACT 5 OF 1878.

[THE BENGAL LAND REGISTRATION (AMENDMENT) ACT, 1878.][¹]

(29th May, 1878.)

An Act to amend Bengal Act 7 of 1876.

Whereas it is expedient to amend Bengal Act 7 of 1876; It is enacted Preamble.
as follows:—

1. For the first clause of section 55 of the said Act the following shall be substituted:—

Clause
substituted
in section 55
of Ben. Act
7 of 1876.

(Printed *ante*, p. 258.)

2. (*Commencement*). *Rep. by the Amending Act, 1903 (1 of 1903).*

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—*see* Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1878, Part IV, p. 79; and for Proceedings in Council, *see ibid*, 1878, Supplement, pp. 375 and 400.

LOCAL EXTENT.—Since this Act has no local extent clause, it must (like the Land Registration Act, 1876, as to which *see* footnote [¹] on p. 235, *ante*) be taken to have been intended to extend to the whole of the former Province of Bengal.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division—*see* Vol. IV, Part III.

The Act is in force in the Sonthal Parganas—*see* Vol. IV, Part VI; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

BENGAL ACT 2 OF 1879.

[THE PURI LODGING-HOUSE (EXTENSION) ACT, 1879.][¹]

(2nd April, 1879.)

An Act to amend and extend the Puri Lodging-house Act, 1871.^[2] Ben. Act 4 of 1871.

Whereas it is expedient to amend Bengal Act No. 4 of 1871,^[2] and Preamble to give power to the Lieutenant-Governor of Bengal^[3] to extend the provisions of the said Act * * *^[4]. It is enacted as follows:—

1. (*Commencement*). *Rep. by the Amending Act, 1903 (1 of 1903).*

2. Section 22 of Bengal Act No. 4 of 1871 is repealed and the following section substituted:—

(Printed *ante*, p. 142.)

3. The Lieutenant-Governor of Bengal^[3] may from time to time, by notification^[5] in the Calcutta Gazette, extend Bengal Act No. 4 of 1871^[2], as amended by this Act, or any part of it, to any town or place to or through which people go on pilgrimage, and to the lines of road leading thereto;

and the provisions of the said Act, or of any part of it, as the case may be, shall, from the date of such notification, apply accordingly, with the following modifications:—

[⁶] * * * * *

in lieu of the word “ Puri ” in sections 2, 3, 7^[6] * * *

*, shall be substituted the name of the place or places mentioned in the notification;

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1879, Part IV, p. 4; for Report of Select Committee, see *ibid*, p. 17; and for Proceedings in Council, see *ibid*, 1879, Supplement, pp. 6, 28 and 250.

LOCAL EXTENT.—As to the local extent of this Act, see footnote [¹] on p. 135, *ante*.

The Act applies to the Sonthal Parganas—see Vol. IV, Part VI; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

[²] Printed *ante*, p. 135.

[³] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[⁴] The words and figures “ to places other than those specified in s. 39 of the said Act,” in the preamble, were repealed by the Amending Act, 1903 (1 of 1903), and are omitted.

[⁵] For a list of notifications issued under s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[⁶] Portions of s. 3 are omitted as having been repealed, by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 16, in Vol. III of this Code.

BENGAL ACT 3 OF 1879.

(THE BENGAL STEAM-BOILERS AND PRIME-MOVERS ACT, 1879.)

CONTENTS.

PREAMBLE.

SECTION.

1. Extent.
(*Commencement.*) *Repealed.*
Lieutenant-Governor may extend it further.
2. Repeal of Ben. Acts 6 of 1864 and 3 of 1875.
3. Interpretation.
4. Power to make rules.
5. On notice from owner, Inspector to examine boiler or prime-mover.
6. Inspector may order owner to alter boiler or prime-mover.
7. When Inspector to grant certificate.
8. Revocation or suspension of certificate.
9. Appeal against refusal, revocation or suspension of certificate.
10. Powers of entry of Inspectors.
11. Penalties.
12. Charges within what period to be brought.
13. Disposal of penalties.

SCHEDULE.

•

BENGAL ACT 3 OF 1879.

(THE BENGAL STEAM-BOILERS AND PRIME-MOVERS ACT, 1879.)^[1]

(7th May, 1879.)

An Act to provide for the periodical inspection of steam-boilers and prime-movers attached thereto * * *^[2].

Whereas it is expedient to provide for the periodical inspection of steam-boilers and prime-movers attached thereto * * * ^{Preamble.} ^[2]; It is enacted as follows:—

1. This Act extends to the town of Calcutta, to the suburbs of Calcutta, and to Howrah as from time to time defined in the Calcutta Gazette under the provisions of any law for the time being in force. ^{Extent}

(Commencement). *Rep. by the Amending Act, 1903 (1 of 1903).*

The Lieutenant-Governor of Bengal^[3] may, by notification published in the Calcutta Gazette, extend this Act to any place or district, and it shall come into force accordingly from the date which may be named in such notification. ^{Lieutenant-Governor may extend it further.}

It shall not apply to any locomotive engine used upon any railway, or to any steam-vessel in the port of Calcutta.

2. Bengal Act 6 of 1864 and Bengal Act 3 of 1875 are hereby repealed. ^{Repeal of Ben. Acts 6 of 1864 and 3 of 1875.}

But all certificates and rules in force at the commencement of this Act, which were granted or made under either of the said Acts, shall be deemed to have been granted and made respectively under this Act.

3. In this Act, unless there be something repugnant in the subject or context,— ^{Interpretation}

“boiler” includes any cylinder or vessel for generating steam under “Boiler.” pressure :

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code. That Act is now known as the Amending Act, 1903—*vide* Act 10 of 1914, Sch. II.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1879, Part IV, p. 3; for Report of Select Committee, see *ibid.*, p. 41; and for Proceedings in Council, see *ibid.*, 1879, Supplement, pp. 320, 325.

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and to Howrah, and may be extended to any other place or district in Bengal—see s. 1.

The Act is in force in the Sonthal Parganas,—see Vol. IV, Part VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

^[2] The words “in the town and suburbs of Calcutta and in Howrah,” in the title and preamble, were repealed by the Amending Act, 1903 (1 of 1903), and are omitted.

^[3] Now the Lieutenant-Governor in Council of Bihar and Orissa.

(Secs. 4-6.)

“Prime-mover.” “prime-mover” includes any steam-engine, fly-wheel, first driving shaft and pulley attached to any such engine:

“Owner.” “owner” includes any agent or hirer using any boiler or prime-mover.

Power to make rules.

4. The Lieutenant-Governor may from time to time make, and, when made, revoke, add to and alter, rules^[1] for all or any of the following purposes, that is to say:—

- (1) for appointing and, when appointed, suspending or removing inspectors under this Act;
- (2) for determining the powers and duties of such inspectors;
- (3) for fixing the fees payable on account of certificates granted under this Act;
- (4) for determining the time for which certificates granted under this Act shall be in force;
- (5) for securing the attendance of assessors and affixing a penalty for non-attendance;
- (6) for regulating the procedure on hearing appeals;
- (7) for carrying out the purposes of this Act.

Such rules shall be published three times in the Calcutta Gazette and shall come into operation at the date of the last publication, or at any later period mentioned in the order.

On notice from owner,¹ Inspector to examine boiler or prime-mover.

5. The owner of any boiler or prime-mover in respect of which a certificate is not in force in the manner hereinafter described shall, before using the same, give notice to an Inspector appointed under this Act of his intention to use or continue to use the same.

The Inspector to whom such notice is given shall appoint a time, between sunrise and sunset, and within fourteen days from the receipt of such notice, for the inspection of such boiler or prime-mover, and at such time shall carefully examine such boiler or prime-mover, and every part thereof, and the owner or person in charge thereof shall afford to such Inspector all reasonable facilities for such examination, and all such information as may reasonably be required.

Inspector may order owner to alter boiler or prime-mover.

6. If, on making the inspection, the Inspector is of opinion that the boiler or prime-mover requires any alteration or addition, he shall serve on the owner or person in charge thereof a written notice requiring him to make such alteration or addition, and no certificate shall be granted in respect of such boiler or prime-mover until such alteration or addition has been made in the manner required by the Inspector, or the owner has obtained a certificate under section 9 of this Act.

[¹] For rules made under s. 4, see the Bihar and Orissa Local Statutory Rules and Orders, 1912, Vol. I, Part VI.

(Secs. 7-10.)

7. If the Inspector is satisfied that such boiler or prime-mover is in good condition, and not so exposed as to be likely to be dangerous,

When Inspector to grant certificate.

and, in case any alteration or addition in such boiler or prime-mover has been ordered under the last preceding section, as soon as he is satisfied that such alteration or addition has been properly made,

he shall give to the owner or person in charge thereof a certificate signed by him to that effect in the form in the Schedule hereto annexed, on payment by the owner or person in charge of such fees as may be fixed under the rules hereinbefore mentioned;

and such certificate shall state the period for which such boiler or prime-mover may be used, and shall cease to be in force on the expiration of such period.

8. Any person authorized by the Lieutenant-Governor in that behalf may revoke or suspend any certificate granted under this Act when he has reason to believe—

Revocation or suspension of certificate.

- (1) that such certificate has been fraudulently obtained, or has been granted erroneously, or without sufficient inspection;
- (2) that the boiler or prime-mover in respect of which it has been granted is not in charge of a person competent to have charge of it, or has since the granting of such certificate, sustained injury; or is not in good condition.

9. The owner of any boiler or prime-mover dissatisfied with any notice or order under sections 6, 7 or 8 of this Act may, within seven days from receipt thereof, appeal either to some person authorized by the Lieutenant-Governor in that behalf, or to some such person assisted by two experts as assessors.

Appeal against refusal, revocation or suspension of certificate.

If such person is satisfied that the owner is entitled to a certificate, he shall, on payment of the fee, grant a certificate in the form in the Schedule hereto annexed, or shall allow the former certificate to continue in force, as the case may be, and shall direct that the expenses of the appeal incurred by Government and certified to by him shall be paid out of the fees and penalties realized under this Act.

If such person decides that the owner is not entitled to a certificate, he shall dismiss the appeal, and the expenses of the appeal incurred and certified in manner aforesaid shall be recoverable from the owner as a fine^[1] by any Magistrate having jurisdiction in the place where the boiler or prime-mover is situated.

10. Any Inspector appointed under this Act may at any time enter into any place where he has reason to believe that a boiler or prime-mover is used, for the purpose of inspecting the same.

Powers of entry of Inspectors.

^[1] As to the recovery of fines, see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 26, in Vol. III of this Code.

(Secs. 11-13.)

Penalties.

11. The owner or person in charge of any boiler or prime-mover who shall use, or, after conviction, continue to use, the same without a certificate duly obtained and in force in respect thereof under this Act, or having obtained a certificate shall, at any reasonable time during the period for which the same may be in force, fail to produce it when called upon to do so by any Magistrate having jurisdiction in the place in which such boiler or prime-mover is situated, or by any person authorized in writing by such Magistrate to demand its production, and

any person who shall prevent an Inspector from entering any place or building where the Inspector has reason to believe that a boiler or prime-mover is used,

shall be punished with a fine not exceeding five hundred rupees.

**Charges
within what
period to be
brought.**

12. * * * * [1] No charge at all shall be brought without the authority of an Inspector appointed under this Act, or after the expiration of six months from the date of the commission of the offence.

**Disposal of
penalties.**

13. All penalties to be levied under this Act shall, subject to the provisions of section 9, be disposed of in such manner as the Lieutenant-Governor shall from time to time direct.

SCHEDULE.

(See sections 7 and 9.)

FORM OF CERTIFICATE.

Name of owner.	Description of boiler and age.	Description of prime-mover and age	Power.	When and where made.	When and where last repaired.	Time for which certificate to be in force.	REMARKS.

I, the undersigned, certify that I have examined the above-named boiler (*or* prime-mover), and to the best of my judgment the boiler (*or* prime-mover), as shown in the above statement is in good condition, and is not so exposed as to be likely to be dangerous [and (*in case alterations or additions have been ordered*) that the alterations (*or* additions) required by me have been properly made].

A. B.,
Inspector.

[1] The words "No charge shall be brought against any person for the recovery of any penalty under this Act before such day as the Lieutenant-Governor shall fix by notification in the Calcutta Gazette, and," were repealed by the Amending Act, 1903 (1 of 1903), and are omitted.

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BENGAL ACT 9 OF 1879.
(THE COURT OF WARDS ACT, 1879.)

CONTENTS.

PREAMBLE.

PART I.

PRELIMINARY.

SECTION.

1. Short title.
Extent.
(Commencement.) *Repealed.*
 2. Repeal and savings.
 3. Interpretation.
 4. Saving of Act 34 of 1858 and of jurisdiction of High Court as respects infants.
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PART II.

CONSTITUTION, JURISDICTION AND POWERS OF THE COURT OF WARDS.

5. Constitution and general duties of Court of Wards.
 6. Disqualified proprietors.
 7. Jurisdiction of Court over disqualified proprietors.
 8. Court when bound to give up charge.
 9. Discretion of Court as to taking and keeping charge.
 10. Application by Civil Court to Court of Wards to take charge.
 - 10A. Notice to creditors.
 - 10B. Creditors to furnish full particulars and documents.
 - 10C. Stay of proceedings of Civil Courts.
 - 10D. Adjudication of claims.
 - 10E. Relinquishment of inextricably involved estates.
 11. Procedure when any of joint proprietors ceases to be disqualified.
 12. Withdrawal from charge by Court.
 13. Procedure when succession to property of ward disputed.
 - 13A. Power of Court to retain charge of property of disqualified proprietor until discharge of debts.
 14. General powers of Court.
 15. Exercise through others of powers conferred on Court.
Delegation of powers.
 16. Establishments and expenses.
 17. (*Repealed.*)
 18. Power to manage property.
 19. When Court may order property to be formed into separate estate.
 20. Appointment of managers and guardians.
 21. Custody, education and residence of wards.
 22. Allowance for ward and his family.
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PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

23. Estate under charge of Court exempt from sale.
Recovery of arrears of revenue due at time when estate ceases to be under charge of Court.

SECTION.

- 23A. Conditions under which estate may be sold for arrear of revenue accrued under Court.
24. Restriction on sale for arrears of revenue of estate belonging to minor.
Power of Collector to attach such estate.
25. Section 24 not to apply unless notice given.
26. Application of proceeds of estate farmed under section 24.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

27. Procedure for ascertaining and declaring disqualification.
28. Power to enforce provisions of Act without report.
29. Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified.
Recovery of expenses if property is not taken under charge of Court.
30. Production of minor proprietor, and order for his temporary custody.
31. Application to Civil Court in case of lunatics.
32. Application to Civil Court to make inquiry regarding disqualification on ground of physical defect or infirmity.
33. Similar application when proprietor resides within original jurisdiction of High Court or beyond Bengal.
34. Powers and duties of Courts when inquiry is instituted under section 32 or 33.
- 34A. Recovery of expenses incurred by Collector under sections 31 to 33.

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

35. Order declaring person or property to be under charge of Court.
36. Collector to take possession of movable property.
37. Additional powers of Collector.

PART VI.

MANAGEMENT AND GUARDIANSHIP.

38. Collector when to be deemed manager.
39. Powers of manager.
40. General duties of manager.
41. Specific duties of manager.
42. General duties of guardian.
43. Specific duties of guardian.
44. Exclusion of certain interested persons from guardianship.
45. Who to be guardian of female ward.
46. Recovery of sums due to the Court.
47. Court may order guardian or manager to make over property.
48. Application of moneys received by manager.
Amount to be expended on improvement.
49. Disposal of surplus moneys.
50. Power to invest surplus.

PART VII.

SUITS.

51. Manager or Collector to be next friend or guardian in suits by or against ward.
52. Power of Court of Wards to nominate another person to be next friend or guardian for suit.

SECTION.

- 53. Payment of costs.
- 54. Service of process against wards.
- 55. Suits not to be brought on behalf of wards unless authorized by the Court of Wards.
- 56. Saving of suits in High Court.

PART VIII.

PENALTIES.

- 57. For disobeying certain orders of Collector.
- 58. For disobeying orders under section 47.
- 58A. Penalty on farmer neglecting to furnish accounts, etc.
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- 59A. Persons employed by Court to be "public servants."

PART IX.

MISCELLANEOUS.

- 60. Disabilities of wards.
- 60A. Exemption of wards' property from execution proceedings in certain cases.
- 60B. Certain persons to be deemed to be wards.
- 61. Adoption by ward invalid without consent of Lieutenant-Governor.
- 62. (*Repealed.*)
- 63. Recovery of interest on arrears of rent.
- 64. Record of reasons when penalty imposed under section 57 or 58.
- 64A. Publication of notices.
- 65. Procedure when Court's jurisdiction ceases.
- 65A. Recovery of expenses after release of property.
- 66. Judicial powers of Collector in making inquiries.
- 67. Appeals.
- 68. Control by Court.
- 69. Control by Lieutenant-Governor.
- 70. Power to Court to make rules.

BENGAL ACT 9 OF 1879.

(THE COURT OF WARDS ACT, 1879.)^[1]

(30th July, 1879.)

An Act to amend the law relating to the Court of Wards.

Whereas it is expedient to amend the law relating to the Court of Preamble.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1878, Part IV, p. 75; for Report of Select Committee, *see ibid*, 1879, Part IV, p. 31; for further Report of Select Committee. *see ibid*, p. 47; and for Proceedings in Council, *see ibid*, 1878, Supplement, pp. 317, 343 and 402, *ibid*, 1879, Supplement, pp. 6, 332, 400 and 441.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal including the Scheduled Districts—*see* s. 1. It has also (with Bengal Act 3 of 1881) been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum, the Kolhan and the Porahat Estate in the District of Singhbhum, in the Chota Nagpur Division,—*see* Vol. IV, Part III.

The Act (with Bengal Act 3 of 1881 and Act 4 of 1892) is in force in the Sonthal Parganas (*see* Vol. IV, Part VI), but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

ANNOTATED REPRINT.—For an annotated reprint of this Act, *see* the Bengal Wards Manual, 1909, p. 11.

Part III of the Act is reprinted in the Sale Law Manual, 1906, pp. 122, 123.

AMENDING ACTS.—Bengal Act 3 of 1881 and Act 4 of 1892 are to be read with and taken as part of Bengal Act 9 of 1879—*see* Ben. Act 3 of 1881, s. 1, *post*, p. 623, and Act 4 of 1892, s. 1, in Vol. I of this Code.

OTHER ACTS AS TO WARDS.—As to wards, *see* also—

the Indian Majority Act, 1875 (9 of 1875), in General Acts, 1868-78, Ed. 1909, p. 477;

the Guardians and Wards Act, 1890 (8 of 1890), in General Acts, 1887-97, Ed. 1909, p. 205; and

the Indian Lunacy Act, 1912 (4 of 1912).

The Bengal Tenancy Act, 1885 (8 of 1885), does not affect any enactment regulating the procedure for the realisation of rents in estates under the management of the Court of Wards—*see* Act 8 of 1885, s. 195 (b), in Vol. I of this Code.

As to the appointment of the Court of Wards to be a Manager under the Bengal Tenancy Act, 1885, *see* ss. 95 and 97 of that Act, in Vol. I of this Code.

As to the application of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), to arrears of rent or of other demands recoverable as rent, in the case of property under the charge of the Court of Wards, *see* s. 3 (6) and Sch. I of the former Act, in Vol. III of this Code.

FURTHER ENACTMENTS.—The Bengal Wills and Intestacy Regulation, 1799 (5 of 1799), does not affect the jurisdiction of the Court of Wards—*see* s. 8 of that Regulation, in Vol. I of this Code.

As to the application of Ben. Act 9 of 1879 to settled estates, *see* the Bengal Settled Estates Act, 1904 (Ben. Act 3 of 1904), ss. 34, 38, in Vol. III of this Code.

As to the payment of income-tax by the Court of Wards, *see* the Indian Income-tax Act, 1886 (2 of 1886), ss. 22, 43 and 45, in General Acts, 1879-86, Ed. 1909, pp. 551, 557, 558.

(Secs. 1-2.)

Wards within the territories under the administration of the Lieutenant-Governor of Bengal^[1]; It is enacted as follows:—

PART I.

PRELIMINARY.

Short title. 1. This Act may be called the Court of Wards Act, 1879:

Extent. It extends to all the territories under the administration of the Lieutenant-Governor of Bengal,^[1] including the Scheduled Districts of Bengal as defined in the Scheduled Districts Act, 1874^[2]. 14 of 1874.

(Commencement). *Rep. by the Repealing and Amending Act, 1897* (5 of 1897).

Repeal and savings. 2. Bengal Act 4 of 1870 (the Court of Wards Act), section 11 of Act 35 of 1858^[3], sections 12, 14 and 15 of Act 40 of 1858^[4], and so much of section 21 of Act 40 of 1858^[4] as provides that the Civil Court may direct the Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards, as constituted by Bengal Act 4 of 1870, shall be deemed to be under the charge of the Court of Wards, as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 11 of Act 35 of 1858^[3], or under section 12, section 14 or section 21 of Act 40 of 1858^[4], shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules prescribed, orders or appointments made, and agreements executed under the Court of Wards Act, 1870, and now in force, shall (so far as they are consistent with this Act) be deemed to be respectively prescribed, made and executed under this Act. Ben. Act 4 of 1870.

And all orders and appointments made by Collectors under Act 35 of 1858^[3] or Act 40 of 1858,^[4] and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

* * * * *

[5]

^[1] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[2] Printed in General Acts, 1868-78, Ed. 1909, p. 441.

^[3] The Lunacy (District Courts) Act, 1858. It has been repealed entirely by the Indian Lunacy Act, 1912 (4 of 1912).

^[4] The whole of Act 40 of 1858 was repealed by the Guardians and Wards Act, 1890 (8 of 1890).

^[5] The remainder of s. 2 (as to pending suits and proceedings) was repealed by the Amending Act, 1903 (1 of 1903), and is omitted.

(Secs. 3-5.)

3. In this Act, unless there be something repugnant in the subject Interpretation. or context,—

“Collector” includes any officer in charge of the revenue-jurisdiction of a district: “Collector.”

“the Court” means the Court of Wards;

“the Court.”

or, when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated:

“estate” means all lands which are borne on the revenue-roll of a “Estate.” Collector as liable for the payment of one and the same demand of land-revenue^[1] [and includes a share in or of an estate other than an undivided share held in coparcenary as the property of a Hindu joint family governed by the *Mitakshara* or *Mithila* law]:

“minor” means a person who has not completed his age of twenty-one years: “Minor.”

“section” means a section of this Act:

“Section.”

“ward” means any person who is under the charge of the Court of Wards, or whose property is under such charge. “Ward.”

4. Nothing contained in this Act shall affect any of the provisions of Act 34 of 1858^[2] or the jurisdiction, as respects infants, of any High Court of Judicature. Saving of Act 34 of 1858 and of jurisdiction of High Court as respects infants.

PART II.

CONSTITUTION, JURISDICTION AND POWERS OF THE COURT OF WARDS.

5. The Board of Revenue^[3] shall be the Court of Wards for the territories to which this Act extends.

It shall deal with every person and every property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Court, in accordance with the provisions of this Act. Constitution and general duties of Court of Wards.

[1] These words in square brackets in the definition of “estate” were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 2, in Vol. I of this Code.

[2] The Lunacy (Supreme Courts) Act, 1858. It has been entirely repealed by the Indian Lunacy Act, 1912 (4 of 1912).

[3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 6-9.)

Disqualified
proprietors.

6. Proprietors of estates shall be held disqualified^[1] to manage their own property when they are—

- (a) females declared by the Court incompetent to manage their own property;
- (b) persons declared by the Court to be minors;
- (c) persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs;
- (d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property;
- ^[2][(e) persons as to whom the Local Government has declared, on their own application, that they are disqualified, and that it is expedient in the public interest that their estates should be managed by the Court.]

Jurisdiction
of Court over
disqualified
proprietors.

7. Whenever the sole proprietor of an estate, or all the joint proprietors of an estate, are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction; and also of the person and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor:

^[3][Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (e) of section 6.]

Court when
bound to give
up charge.

8. Whenever the circumstances of any ward become such that the Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to release from its charge such person and his property.

Discretion of
Court as to
taking and
keeping
charge.

9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor—

- (a) take charge of such property without taking charge of such person;

^[1] As to ascertainment of disqualification, see Part IV, *post*, p. 297.

^[2] Clause (e) was added to s. 6 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 3, in Vol. I of this Code.

^[3] This proviso was added to s. 7 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 4, in Vol. I of this Code.

(Secs. 10-10A.)

- (b) refrain from taking charge of any such person or property;
- (c) at any time withdraw from such charge, if taken;
- (d) at any time resume such charge, after having withdrawn from it.

* * * * *

3 of 1890.

10. [2][Whenever a Civil Court is satisfied that an order should be made under section 7 of the Guardians and Wards Act, 1890,^[3] appointing a guardian of the person or property of a minor, or both;

whenever a Civil Court removes, under section 39 of the same Act,^[3] the guardian of a minor,]

or whenever a person has been adjudged, under Act 35 of 1858,^[4] to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act 35 of 1858^[5] shall be held to apply to persons or properties under the charge of the Court of Wards.

[6]10A. (1) Wherever the Court of Wards assumes charge of any person or property under section 7 or section 10, it shall publish, in the manner provided in section 64A, a notice calling upon all creditors having claims against the ward or his immovable property to submit the same in writing to the Court, at a place to be named in the notice, within six months from the date of the publication of the notice aforesaid.

[1] The clauses of s. 9 which were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 5 (printed in Vol. I of this Code), were repealed, by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 2, and are omitted.

[2] The clauses in square brackets in s. 10 were substituted for the original clauses by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 6, in Vol. I of this Code.

[3] Printed in the General Acts, 1887-97, Ed. 1909, p. 205.

[4] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

[5] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), and this reference should now be construed as a reference to ss. 73 to 81 of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

[6] This s. 10A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 3, in Vol. III of this Code.

(Secs. 10B.-10D.)

(2) Every *such* claim (other than a claim on the part of the Government) not submitted to the Court in compliance with the provisions of sub-section (1), shall, save in the case provided for by section 10E, sub-section (2), clause (c), notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the period aforesaid:

Provided that, if the Court is satisfied that the creditor was prevented by any sufficient cause from complying with the provisions of sub-section (1), it may consider and allow, either wholly or in part, his claim for interest at any time after the date of the expiry of the period aforesaid.

Creditors to
furnish full
particulars
and docu-
ments.

[¹]10B. (1) Every creditor submitting his claim in compliance with the provisions of section 10A, sub-section (1), shall furnish, along with his written statement of claim, full particulars thereof; and shall, within such time as the Court may appoint, produce all documents which are in his possession, power or control (including entries in books of account) on which he relies to support his *claim*, together with a true copy of every such document.

(2) The Court shall, after marking, for the purpose of identification, every original document so produced, and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document, which to the knowledge of the creditor is in his possession, power or control, is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the ward, whether during the continuance of the management or afterwards, in any suit brought by the creditor or by any person claiming under him in respect of such claim.

Stay of pro-
ceedings of
Civil Courts.

[²]10C. If a Civil Court has directed any process of execution to issue against any immovable property of a ward, or the rents thereof, or any crops standing thereon, the Court of Wards may, at any time within one year after it assumed charge of such property, apply to the Civil Court to stay proceedings in the matter of such process; and the Civil Court may, on such terms regarding interest or compensation for delay as may appear to it to be just and reasonable, stay such proceedings for such period as it may deem fit.

Adjudica-
tion of
claims.

[³]10D. (1) On receipt of all claims submitted in compliance with the provision of sections 10A and 10B, the Court shall proceed to

[¹] This section 10B was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 3, in Vol. III of this Code.

[²] This section 10C was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 3, in Vol. III of this Code.

[³] This section 10D was inserted, for Western Bengal, by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 3, in Vol. III of this Code.

(Sec. 10E.)

investigate such claims, and shall decide which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate its decision in writing to each claimant concerned.

(2) When the Court has admitted any claim under sub-section (1), it may make to the creditor a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both; and, if such proposal, or any modification of it, is accepted by the creditor and his acceptance is finally recorded and attested by the Court, it shall be conclusively binding upon the creditor and upon the ward:

Provided that if, when the superintendence of the property by the Court is relinquished or otherwise terminates, any portion of the claim reduced as aforesaid is still unsatisfied, the creditor shall be entitled to recover a sum bearing the same proportion to the original claim admitted under sub-section (1) as the unsatisfied portion bears to the reduced claim.

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim against a ward or his property which has been submitted to the Court of Wards:

Provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant.

(4) In calculating the period of limitation applicable to suits for the recovery of a claim which has been submitted to the Court of Wards, the period from the date of submission of the claim up to the date of the communication of the Court's decision thereon to the creditor shall be excluded.

[¹]10E. (1) The Court of Wards may, after making an investigation under section 10D, when it appears to the Court that the estate is involved beyond all hope of extrication, or for any other sufficient reason, by notice published in the manner provided in section 64A, declare that it will, on a date to be fixed by the notice, relinquish charge of the property and person (or of the property, as the case may be) of the ward under this section. Relinquish-
ment of
inextricably
involved
estates.

(2) On the date so fixed—

(a) such charge shall terminate;

(b) the owner of the said property shall be restored to the possession thereof, subject to any contracts entered into by the

[¹] Section 10E was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 3, in Vol. III of this Code.

(Secs. 11-13.)

Court of Wards for the preservation or benefit of such property; and

- (c) the claims for interest barred under section 10A, sub-section (2), shall revive in case the debt or liability in respect of which the interest is claimed be not then barred by any law of limitation.

(3) In calculating the periods of limitation applicable to suits to recover claims for interest revived under this section, the time during which such charge has continued shall be excluded.

Procedure
when any of
joint pro-
prieters
ceases to be
disqualified.

[¹]11. Whenever one or more of the joint proprietors of whose properties the Court has taken charge ceases to be subject to the jurisdiction of the Court, the Court may retain charge of the persons and properties of the still disqualified proprietors during the continuance of their disqualification.

And, in case any person entitled to any property jointly with any disqualified proprietor shall consent thereto, the Court may retain or resume the charge of the property of such proprietor or any part thereof so long as the property of any such disqualified proprietor as aforesaid remains in charge of the Court.

Withdrawal
from charge
by Court.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10 or under section 11, and from the charge of any person or property [²] [which either before or after the commencement of this Act was or is placed] under the charge of the Collector by a Civil Court under section 12, section 14 or section 21 of Act 40 of 1858, [³] or under section 11 of Act 35 of 1858, [⁴] [or under any other enactment for the time being in force]: [⁵]

Provided that it shall give notice of its intention to withdraw to the Civil Court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

Procedure
when succe-
sion to pro-
perty of
ward dis-
puted.

13. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such

[¹] This section was substituted for the original s. 11 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 7, in Vol. I of this Code.

[²] These words in square brackets were substituted for the words "which before the commencement of this Act was placed" by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 8, in Vol. I of this Code.

[³] Act 40 of 1858 was repealed by the Guardians and Wards Act, 1890 (8 of 1890).

[⁴] The Lunacy (District Courts) Act, 1858. It has been repealed by the Indian Lunacy Act, 1912 (4 of 1912), s. 8, in Vol. I of this Code.

[⁵] These words in square brackets were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 8, in Vol. I of this Code.

(Secs. 13A-15.)

property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal Act 7 of 1876,^[1] or until the dispute has been determined by a competent Civil Court.

[²]13A. If, when any disqualified proprietor dies, or ceases to be disqualified within the meaning of this Act, there remain undischarged any debts or liabilities which were incurred by, or are due from, such proprietor, or which are a charge upon his property or any part thereof, then, notwithstanding anything contained in the foregoing sections, the Court may either withdraw from the charge of such property or retain such charge until such debts and liabilities, as the Court considers necessary to be discharged, together with all interest due thereon, have been discharged:

Power of Court to retain charge of property of disqualified proprietor until discharge of debts.

Provided that, after the death of a proprietor, the Court shall not retain charge on account of any debt or liability which has been declared by a competent Civil Court not to be binding on his representative.

14. Subject to the provisions of this Act, the Court—

General powers of Court.

- (a) may, through its manager, do all such things requisite for the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Civil Court, as the proprietor of any such property, if not disqualified, might do for its care and management, and
- (b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.

15. The Court may exercise all or any powers conferred on it by this Act through the Commissioners of the Divisions and the Collectors of the districts in which any part of the property of the disqualified proprietor may be situated, or through any other person whom it may appoint for such purpose.

Exercise through others of powers conferred on Court.

The Court may, with the sanction of the Lieutenant-Governor, from time to time delegate any of its powers to such Commissioners or Collectors or other person as aforesaid, and may at any time, with the like sanction, revoke such delegation.

Delegation of powers.

[¹] The Bengal Land Registration Act, 1876. It is printed, *ante*, p. 235.

[²] This s. 13A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 4, in Vol. III of this Code.

(Secs. 16-21.)

Establish-
ments and
expenses

[¹]16. The Court may from time to time order such establishments to be entertained and expenses to be incurred as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all purposes of this Act; and may order that such expenses, inclusive of all salaries, gratuities and payments on account of the leave-allowances of such establishments, be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

17. (*General contribution for general purposes.*) *Rep. by the Government Management of Private Estates Act, 1892 (10 of 1892), s. 9.*

Power to
manage
property.

18. The Court may sanction the giving of leases or farms of the whole or part of any property under its charge, and may direct the mortgage or sale of any part of such property, and may direct the doing of all such other acts as it may judge to be most for the benefit of the property and the advantage of the word.

When Court
may order
property to
be formed
into sepa-
rate estate.

19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector to partition off such part into a separate estate; and the demand of land-revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant-Governor, may direct.

Appointment
of managers
and guard-
ians.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward, under the charge of the Court, and may control and remove any manager or guardian so appointed.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

Custody,
education
and resi-
dence of
wards.

21. The Court may make such orders as to it may seem fit in respect of the custody, education and residence of a minor ward, and such minor

[¹] This section was substituted for the original s. 16 by the Bengal Courts of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 3, *post*, p. 433. The original section ran thus :—

“16. The Court may from time to time order such establishments to be entertained and expenses to be incurred, as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all purposes of this Act,

and may order that the cost of any such establishment and any such expenses be charged against any one or more properties for the purposes of which they are entertained or incurred.”

(Secs. 22-23.)

members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

22. The Court shall allow, for the support of each ward and of his family such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

Allowance
for ward
and his
family.

PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

[¹]23. *Clause 1.*—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act 11 of 1859,[²] every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act 7 of 1876,[³] shall be exempt from sale for arrears of Government revenue which accrued whilst such estate, share or part has been under the charge of the Court:

Estate under
charge of
Court exempt
from sale.

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

Clause 2.—If at the time when such estate, share or part ceases to be under the charge of the Court of Wards, an arrear of revenue is due on account thereof, the Collector may attach such estate, share or part and collect the rent, cesses and other demands due, and all arrears thereof, managing such estate, share or part either directly or through a manager, or by farming it for a period not exceeding five years, as he may think fit:

Recovery of
arrears of
revenue
due at time
when estate
ceases to be
under charge
of Court.

Provided that, when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector; and the Collector, after deducting the claims of Government

[¹] These ss. 23 and 23A were substituted for the original s. 23 by the Bengal Court of Wards (Amendment) Act, 1881, Ben. Act 3 of 1881), s. 4, *post*, p. 433. The original section ran thus :—

“ 23. Every estate, and, subject to the provisions of s. 14 of Act 11 of 1859, every part or share of an estate for which a separate account has been opened under s. 10 or s. 11 of the said Act, or under s. 70 of Bengal Act 7 of 1876, shall, whilst it is under the charge of the Court, be exempt from sale for arrears of revenue :

“ Provided that all arrears of revenue shall be the first charge upon the proceeds of any such estate, part, or share, sold for any other cause than for arrears of revenue while under such charge.”

[²] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[³] The Land Registration Act, 1876. It is printed, *ante*, p. 235.

(Secs. 23A-25.)

for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment, and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or grant with an account of the receipts and expenditure over the time when such estate, or part was under attachment.

Conditions under which estate may be sold for arrear of revenue accrued under Court.

[¹]23A. Notwithstanding anything in clause 5, section 8, Regulation 1 of 1793,[²] or in section 23 of this Act, contained, any estate, share or part of an estate on which an arrear of revenue has accrued while under the charge of the Court, may at any time be sold under the provisions of the law[³] for the time being in force for the recovery of arrears of Government revenue, if the Court has certified in writing that the interests of the ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

Restriction on sale for arrears of revenue of estate belonging to minor.

24. No estate the sole property of a minor or of two or more minors, and descended to him or them by the regular course of inheritance, or by virtue of the will of, or some settlement made by, some deceased owner thereof, shall be sold for arrears of revenue accruing subsequently to his or their succession to the same, until such minor or one of such minors has completed his age of twenty-one years; but all arrears of revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Power of Collector to attach such estate.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years, nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Section 24 not to apply unless notice given.

25. The exemption from sale for arrears of revenue given by section 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

[¹] See footnote on s. 23, *ante*, p. 295.

[²] The Bengal Permanent Settlement Regulation, 1793. It is printed in Vol. I of this Code.

[³] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

(Secs. 26-29.)

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector; and the Collector, after deducting the amount of the claims of Government for revenue and other public demands and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

Application of proceeds of estate farmed under section 24.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

27. Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such inquiry as he may deem necessary; and, if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court;

Procedure for ascertaining and declaring disqualification.

and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

28. Nothing in section 27 shall prevent the Court or the Local Government from putting the provisions of this Act in force without any report from the Collector.

Power to enforce provisions of Act without report.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue-roll of his district has died,

Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified.

or that the sole proprietor of any estate has died within his district,

and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the movable property of such heirs, and of all deeds, documents or papers relating to the property of such heirs, as to him may seem fit.

Such Collector may call upon any other Collector in whose jurisdiction any such moveable property, or any such deeds, documents or papers may be, to take charge of the same; and thereupon such other Collector shall have the same powers with respect to such property, deeds, documents and papers within his district as are conferred by this section on the first mentioned Collector.

(Secs. 30-33.)

Recovery
of expenses
if property
is not taken
under charge
of Court.

If the property is not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue from the owner of such property or the person or persons whom the Collector shall find to be in possession of such property, and shall constitute a demand under Bengal Act 7 of 1868,[¹] or any similar law[²] for the time being in force.

Production of
minor pro-
prietor, and
order for his
temporary
custody.

30. A Collector acting under the last preceding section may direct that any person who has the custody of a minor heir of any such deceased proprietor shall produce such minor before such Collector or before any other Collector on a day fixed; and the Collector before whom the minor is so produced may make such order for the temporary custody and protection of such minor as to him may seem fit.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

Application
to Civil
Court in case
of lunatics.

31. If a sole proprietor of an estate, who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court, is reported by a Collector to be of unsound mind and incapable of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act 35 of 1858,[³] to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

Application
to Civil Court
to make in-
quiry regard-
ing disquali-
fication on
ground of
physical
defect or
infirmity.

32. If a sole proprietor of an estate, who does not reside within the local limits of the ordinary original civil jurisdiction of the High Court, is reported by a Collector to be incapable of managing his property on the ground of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the district within which such person may be residing; and, upon such Collector so applying, such Civil Court shall inquire into and determine the question as to the alleged incapacity.

Similar
application
when pro-
prietor
resides
within ori-
ginal juris-
diction
of High
Court or
beyond
Bengal.

33. If a sole proprietor of an estate, who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal,[⁴] shall be reported

[¹] The Bengal Land-revenue Sales Act, 1868. It is reprinted, *ante*, p. 81.

[²] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

[³] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

[⁴] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 34-34A.)

by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the 24-Parganas, or to such other Civil Court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such Civil Court shall thereupon inquire into and determine the question as to the alleged incapacity.

34. When any inquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such inquiry, have the powers conferred, and proceed in the manner prescribed, by Act 35 of 1858^[1] with respect to the inquiries directed to be made by the said Act.

Powers and duties of Courts when inquiry is instituted under section 32 or 33.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such inquiry; and the Court of Wards shall thereupon, in case the proprietor has been found by the Civil Court to be incapable as aforesaid, make such order, consistent with this Act, as it shall think fit.

The Civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a Civil Court by section 21 of Act 35 of 1858,^[2] with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

^[3]**34A.** All expenses incurred by a Collector in taking action under section 31, section 32 or section 33 in respect of any person shall, if the property of such person is not taken under the charge of the Court, be recoverable from such person or from the person whom the Collector finds to be in possession of such property, *under the procedure provided by the Public Demands Recovery Act, 1895,*^[4] for the recovery of public demands.

Recovery of expenses incurred by Collector under sections 31 to 33.

Ben. Act 1 of 1895.

34A. All expenses incurred by a Collector in taking action under section 31, section 32 or section 33 in respect of any person shall, if the property of such person be not taken under the charge of the Court,

Recovery of expenses incurred by Collector under sections 31 to 33.

^[1] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

^[2] This reference should now be construed as a reference to s. 82 of the Indian Lunacy Act, 1912 (4 of 1912).

^[3] This s. 34A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 5, in Vol. III of this Code.

^[4] Bengal Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

(Secs. 35-38.)

be recoverable from such person or from the person whom the Collector finds to be in possession of such property, *as if it were an arrear of land-revenue.*

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

Order
declaring
person or
property to
be under
charge of
Court.

35. Whenever the Court has determined to take the person or property of a disqualified proprietor under its charge, whether in accordance with an order of the Civil Court or otherwise, the Court shall make an order declaring the fact and directing that possession be taken of such person and property or of such property on behalf of the Court; and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

Collector
to take
possession of
movable
property.

36. As soon as conveniently may be after an order is made under the provisions of section 35, the Collector of every district within which any part of the ward's property may be situated, or some person authorized in writing by him in that behalf, shall take possession of all accounts, papers and movable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper or property is in any room, box or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper or property.

Additional
powers of
Collector.

37. Any such Collector may also order all persons in the employ of the ward, or all persons who were in the employ of the deceased proprietor from whom the ward has derived his property, to attend before him;

and may order any person to deliver up any accounts, papers or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures.

PART VI.

MANAGEMENT AND GUARDIANSHIP.

Collector
when to be
deemed
manager.

38. If no manager of the property of a ward is appointed by the Court, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court may appoint

(Secs. 39-41.)

in that behalf, shall be competent to do, under the orders of the Court, anything that might be lawfully done by the manager of such property.

39. Every manager appointed by the Court shall have power to manage all property which may be committed to his charge, to collect the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor;

Powers of manager.

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.[¹]

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall, in every respect, act to the best of his judgment for the ward's interest as if the property were his own.

General duties of manager.

41. Every manager appointed by the Court shall—

(a) have the care of so much of the property of the ward as the Court may direct;

Specific duties of manager.

(b) give such security (if any) as the Court thinks fit, to the Collector, duly to account for all such property and for what he shall receive in respect of such property;

(c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;

(d) pass his accounts at such periods and in such forms as the Court may direct;

(e) pay the balance due from him thereon;

(f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;

(g) sign all papers, deeds, documents and writings which may be executed by him by virtue of his office;

(h) be entitled to such allowance, to be paid out of the property, as the Court may think fit, for his care and pains in the execution of his duties;

(i) be responsible for any loss occasioned to the property by his wilful default or gross negligence.

[¹] As to the grant by the Court of Wards of leases of *ghatwali* lands, see the Bengal Ghatwali Lands Act, 1859 (5 of 1859), in Vol. I of this Code.

As to the right of a manager, appointed by the Court of Wards, to vote for the adoption of a scheme for the reclamation or improvement of lands under the Bengal Drainage Act, 1880 (Ben. Act 6 of 1880), see s. 16 (2) of that Act, *post*, p. 343.

(Secs. 42-47.)

General
duties of
guardian.

42. A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

Specific
duties of
guardian.

43. Every guardian appointed by the Court shall—

- (a) give such security (if any) as the Court thinks fit, to the Collector for the due performance of his duty;
- (b) pass his accounts at such periods and in such form as the Court may direct;
- (c) pay the balance due from him thereon;
- (d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;
- (e) apply for the sanction of the Court to any act which may involve expense not previously sanctioned by the Court;
- (f) be entitled to such allowance, to be paid out of the property of the ward, as the Court may think fit, for his care and pains in the execution of the duties.

Exclusion of
certain inter-
ested persons
from guard-
ianship.

44. No person who would be the next legal heir of a ward, or would otherwise be immediately interested in outliving a ward, shall be appointed to be his guardian;

but nothing in this section shall apply to the mother of a ward or to a testamentary guardian.

Who to be
guardian of
female ward.

45. If the ward is a female, a female of the same religion shall, except in the case of a testamentary guardian, be appointed guardian, preference being given to female relatives if any such be eligible.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

Recovery of
sums due to
the Court.

46. Every sum due to the Court from a manager or guardian or from the sureties of a manager or guardian, or from any officer or servant employed under the Court, or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act 7 of 1868^[1] or any similar law^[2] for the time being in force.

Court may
order guard-
ian or mana-
ger to make
over pro-
perty.

47. The Court may order any past or present manager or guardian, or past or present officer subordinate to a manager or guardian, to deliver up his accounts or any property which may be in his possession within such time as may be fixed by the Court.

[¹] The Bengal Land-revenue Sales Act, 1868. It is printed, *ante*, p. 81.

[²] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

(Sec. 48.)

[¹]48. All moneys received by the manager shall be applied to the purposes hereinafter mentioned, in accordance with such instructions as the Court may from time to time give in that behalf. Application of moneys received by manager.

Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included under Class I over those included in Class II, and priority shall be given to the purposes included in Class II over those included in Class III.

CLASS I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family,

for the management and supervision of the property of the ward,

and the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

CLASS II.

The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward,

the liquidation of debts payable by the ward,

the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise,

the maintenance in an efficient condition of the estates, buildings and other immovable property belonging to the ward, and

the payment of such religious, charitable and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

CLASS III.

The improvement of the land and property of the wards and the benefit of the ward and his property generally:

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*[²]

[¹] This section was substituted for the original s. 48 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 5, *post*, p. 433.

[²] The proviso was repealed by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 9, and is omitted.

(Secs. 49-50.)

Disposal of
surplus
moneys.

[¹]49. If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years whose property [²][is under the charge of the Court under clause (e) of section 6, or under the second clause of section 11], no part of the surplus mentioned in the proviso [³] to the section immediately preceding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining, after provision has been made for such purposes, shall be paid to such ward :

Provided that, before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain—

(1) as a working balance for the management of the property and expenses incidental thereto;

(2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.

Power to
invest
surplus.

[⁴]50. If the ward is not a female or [⁵][male] as aforesaid, and if any surplus remains after providing, so far as the Court may think fit, for the objects mentioned in [⁶][section 48], the same shall be applied in the purchase of other landed property, or invested at interest on the security of—

promissory notes, debentures, stock and other securities of the Government of India or of the United Kingdom of Great Britain and Ireland;

bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India;

[¹] This section was substituted for the original s. 49 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 5, *post*, p. 433.

As to the application of s. 49, *see also* s. 26, *ante*, p. 297.

[²] These words in square brackets in s. 49 were substituted for the words "remains under the charge of the Court with his consent under s. 11" by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 10, in Vol. I of this Code.

[³] The proviso ran thus :—

"Provided that the amount expended for such improvement and benefit in any one year shall not exceed ten *per centum* of the surplus which the accounts of the previous year may show to have been available after paying or making provision for the payment of all expenses incurred up to the end of such previous year, unless, in the opinion of the Court and of the Lieutenant-Governor, it is desirable for the protection or in the interests of the ward or his property to expend an amount exceeding such percentage."

[⁴] As to the application of s. 50 *see also* s. 26, *ante*, p. 297.

[⁵] The word "male," in s. 50, was substituted for the word "person" by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 6, *post*, p. 433.

[⁶] The word and figures "section 48," in s. 50, were substituted for the word and figures "section 49" by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 6, *post*, p. 433.

(Secs. 51-54.)

stock or debentures of or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council;

debentures or other securities for money paid by or on behalf of any^[1] [municipal body under the authority of any] Act of a legislature established in British India; or

such other securities, stocks or shares, guaranteed by the Government of India or the Government of Bengal, as to the Court shall seem fit; ^[1][or,

mortgages on immovable property].

PART VII.

SUITS.

51. In every suit brought by or against any ward he shall be therein described as a ward of Court; and the manager of such ward's property, or, if there is no manager, the Collector of the district in which the greater part of such property is situated, or any other Collector whom the Court of Wards may appoint in that behalf, shall be named as next friend or guardian for the suit, and shall in such suit represent such ward; and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending.

52. The Court of Wards may, by an order, nominate or substitute any other person to be next friend or guardian for any such suit; and, upon receiving a copy of any such order of substitution, the Civil Court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

53. If in any such suit any Civil Court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

54. Every process which may be issued out of any Civil Court against any ward shall be served, through the Collector, upon the next friend or guardian for the suit as aforesaid of such ward.

[¹] These words in square brackets were added by the Bengal Court of Wards (Amendment) Act, 1909 (Ben. Act 2 of 1909), s. 2 (in Vol. III of this Code).

(Secs. 55-58A.)

Suits not to be brought on behalf of wards unless authorized by the Court of Wards.

55. No suit shall be brought on behalf of any ward [¹][by a manager], unless the same be authorized by some order of the Court:

Provided that a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation; but such suit shall not be afterwards proceeded with except under the sanction of the Court:

Provided also that suits for arrears of rent may be brought on behalf of any ward if authorized by an order of the manager of the landed property on which such rents are due.

Saving of suits in High Court.

56. Nothing contained in this Part shall apply to any suit instituted or pending in the High Court * * * [²].

PART VIII.

PENALTIES.

For disobeying certain orders of Collector;

57. Any person who refuses to comply with an order of a Collector under sections 29, 30, 36 or 37 shall be liable, by order [³] of the Collector, to a fine not exceeding five hundred rupees.

For disobeying orders under section 47.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order [³] of the Court, with simple imprisonment and attachment of his property until the order is complied with:

[⁴][Provided that the Collector may release any person who has been so imprisoned, on his furnishing sufficient security for his attendance and for the delivery of the accounts or property required within such time as the Collector shall think fit. The Collector may, at any time, rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.]

Penalty on farmer neglecting to furnish accounts, etc

[⁵]58A. Any farmer, holding or having held lands under the Court, who, upon notice served upon him to that effect at any time during the currency of the lease or within six months after the expiry of the lease under which such lands were held or after he has relinquished such

[¹] The words "by a manager," in s. 55, were inserted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 7, *post*, p. 433.

[²] The words "or to a proprietor whose property is under the charge of the Court under clause (e) of s. 6 or under the second clause of s. 11," in s. 56, as amended by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 11, were repealed by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 6, and are omitted.

[³] A formal record must be made when an order is passed under s. 57 or s. 58—see s. 64, *post*, p. 309.

[⁴] This proviso was added to s. 58 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 8, *post*, p. 434.

[⁵] Section 58A was inserted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 9, *post*, p. 434.

(Secs. 59-59A.)

lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission; and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or, in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or last-known place of abode of such person; and, in case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such a way as the Collector issuing the notice may direct;

and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that, whenever the amount levied under such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner.

59. Any person who disobeys any lawful order of the Court shall be liable, on conviction before a Magistrate, to a fine not exceeding five hundred rupees and, if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees. For disobey-
ing order of
Court.

-45 of 1860.

[¹]**59A.** Every person employed by the Court under this Act shall, for the purposes of the Indian Penal Code,[²] be deemed to be a public servant. Persons
employed
by Court
to be
"public
servants."

[¹] Section 59A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 7, in Vol. III of this Code.

[²] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

(Secs. 60-63.)

PART IX.

MISCELLANEOUS.

Disabilities
of wards.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in his property or any part thereof, [¹][or to assign over or charge any allowance to be received by him from the Court].

Exemption
of wards
property
from execu-
tion proceed-
ings in cer-
tain cases.

[²]**60A.** No property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge.

Certain
persons to
be deemed
to be wards.

[³]**60B.** For the purposes of Part VII and sections 60 and 60A, a person whose property is under the charge of the Court of Wards by virtue of the second clause of section 11, or charge of whose property has been retained under section 13A, shall be deemed to be a "ward," but only so far as regards such property.

Adoption by
ward invalid
without
consent of
Lieutenant-
Governor.

61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.

62. (*Sections 60 and 61 not to apply in certain cases.*) *Rep. by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 9.*

63. (*Arrears of rent how recoverable.*) *Rep. by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880).*

Recovery of
interest on
arrears of
rent.

[⁴]**63.** Any amount of interest which has accrued due, on arrears of rent or other demand recoverable as rent payable to the manager of an estate which is in charge of the Court, may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force; and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demand are recoverable may direct that any costs

[¹] These words in square brackets were added to s. 60 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 12, in Vol. I of this Code.

[²] Section 60A was inserted by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 13, in Vol. I of this Code.

[³] Section 60B was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 8, in Vol. III of this Code.

[⁴] This s. 63 was enacted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 10, *post*, p. 434.

(Secs. 64-65A.)

incurred by the manager in obtaining such order or certificate, and in executing the same, shall be recovered in the same manner and by the same process as if the amount thereof had been included in the said order or certificate.

64. When any penalty is imposed by any order under section 57 or section 58, the Collector or Court passing such order shall make a formal record of the same, with the reasons or grounds thereof.

Record of reasons when penalty imposed under section 57 or 58.

[¹]**64A.** Any notice required to be published by the provisions of sub-section (1) of section 10A, or of sub-section (1) of section 10E, shall be published—

Publication of notices.

[²][(a) in the Calcutta Gazette;]

(b) in at least three issues each of one English and one Vernacular newspaper published in Calcutta;

(c) in *two issues* of a newspaper (if any) published in the district or Division in which the ward ordinarily resides, or has last resided; and

(d) by posting such notice on the notice-boards in the offices of the Collector and of the Judge of the district in which the place named in the notice is situate.

65. Whenever the Court has determined to release the property of a ward from its charge, it shall make an order that the jurisdiction of the Court over such property shall cease on a date not more than sixty and not less than fifteen days from the date of such order; and copies of such order shall be published as the Court may direct.

Procedure when Court's jurisdiction ceases.

[³]**65A.** Any expense incurred by the Court on account of any property under its charge may, after the release of such property, be recovered as a demand, under Bengal Act 7 of 1880[⁴] or any other Act[⁵] at the time being in force for the recovery of public demands, from any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property:

Recovery of expenses after release of property.

[¹] This s. 64A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 10, in Vol. III of this Code.

[²] This clause (a) was substituted for the original clause (a), by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 5, Sch. III, in Vol. III of this Code.

[³] Section 65A was inserted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 11, *post*, p. 434.

[⁴] Ben. Act 7 of 1880 was repealed by the Public Demands Recovery Act, 1895 (Ben. Act 1 of 1895), which, again, has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code.

[⁵] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

(Secs. 66-70.)

Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person.

Judicial
powers of
Collector
in making
inquiries.
Appeals.

66. A Collector making any inquiry under this Act may exercise any power conferred by the Code of Civil Procedure^[1] on a Civil Court ^{10 of 1877.} for the trial of suits.

67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the Division, and from every order of a Commissioner under this Act to the Court.

Control by
Court.

68. All orders or proceedings of the Commissioner and of the Collector under this Act shall be subject to the supervision and control of the Court; and the Court may, if it thinks fit, revise, modify or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

Control by
Lieutenant-
Governor.

69. In the exercise of the powers and in the discharge of the duties conferred and imposed respectively on the Court by this Act, the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.

Power to
Court to
make rules.

70. The Court may make rules,^[2] consistent with this Act,—

- (a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more Divisions;
- (b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property;
- (c) prescribing the periods at which and the mode in which accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited;
- (d) regulating the custody of securities and title deeds belonging to the estate or property of a ward;
- (e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act;

[¹] Act 10 of 1877 was repealed and re-enacted by Act 14 of 1882, which again has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

[²] For rules made under s. 70, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(*Sec. 70.*)

(f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court; and

(g) generally for the better fulfilment of the purposes of this Act.

The Court may from time to time alter, add to or repeal such rules.

BENGAL ACT 5 OF 1880.
(THE BENGAL VACCINATION ACT, 1880.)

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BENGAL ACT 5 OF 1880.

(THE BENGAL VACCINATION ACT, 1880.)^[1]

(26th May, 1880.)

An Act to make Vaccination Compulsory.

PRELIMINARY.

Whereas it is expedient to make vaccination compulsory in ^[2][the Preamble.
town of Calcutta and the port of Calcutta] and in other towns and
selected local areas in the territories administered by the Lieutenant-
Governor of Bengal^[3] to which this Act may be hereafter extended;
It is hereby enacted as follows:—

I. This Act may be called the Bengal Vaccination Act, 1880;

Short title.

It applies in the first instance only to ^[2][the town of Calcutta and
the port of Calcutta] as hereinafter defined; Extent.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1880, Pt. IV, p. 62; for Report of Select Committee, *see ibid*, p. 117; and Proceedings in Council, *see ibid*, Supplement, pp. 270, 311, 405, 406.

LOCAL EXTENT.—This Act extends to the town and port of Calcutta, and any portion of it may be extended, by notification, to any other town or selected area in Bengal—*see* s. 1.

The operation of the Act in any place may be suspended by notification—*see* the concluding paragraph of s. 1, *post*, p. 316.

For a list of places in the Province of Bihar and Orissa to which the Act has been extended under s. 1, *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I, p. .

AMENDMENTS MADE BY THE LOCAL SELF-GOVERNMENT ACT.—Sections 92 to 95 of the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885) and the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), are to be read with, and taken as part of (Ben. Act 5 of 1880—*see* Ben. Act 3 of 1885, s. 96, *post*, p. 688, and Ben. Act 2 of 1887, s. 1, *post*, p. 727.

Sections 92 to 94 of the Act of 1885 impose duties and confer powers on District Boards with respect to vaccination, and s. 95 empowers Commissioners of Divisions to make rules for the guidance of District Boards in the discharge of those functions.

It is provided by s. 93 of the Act of 1885 that Inspectors of Vaccination appointed by a District Board shall exercise the powers and perform the duties assigned to the Superintendent of Vaccination under the Bengal Vaccination Act, 1880, and, by s. 94, that District Boards shall have the powers of the Magistrate of the district under s. 25 of the Act of 1880.

INOCULATION.—As to the prevention of inoculation for small-pox, *see* the Bengal Prevention of Inoculation Act, 1865 (Ben. Act 4 of 1865), *ante*, p. 33.

[²] The words "the town of Calcutta and the port of Calcutta," in the preamble and in s. 1, were substituted for the words "the town, port and suburbs" by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), ss. 2 and 3, respectively, *post*, p. 731.

[³] This includes the present province of Bihar and Orissa except the district of Sambalpur.

(Sec. 2.)

Power to extend Act to towns and local areas.

But the Lieutenant-Governor may, by notification published in the Calcutta Gazette, declare his intention to extend this Act, or any of its provisions, to any town or selected local area in the territories administered by him.

Objection to such extension.

Any inhabitant of such town or area objecting to such extension may, within six weeks from the said publication, send his objection in writing to the Secretary to the Government of Bengal, and the Lieutenant-Governor shall take such objection into consideration.

Procedure thereon.

When six weeks from the said publication have expired, the Lieutenant-Governor, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if in his opinion they are insufficient, may by like notification^[1] effect the proposed extension.

The Lieutenant-Governor shall cause the substance of any notification mentioned in this section to be proclaimed and notified within the town or area affected by the same, in the vernacular of such town or area, by such means, and in such manner, as he may direct.

Commencement.

This Act shall come into force from the day^[2] on which it may be published in the Calcutta Gazette with the assent of the Governor General; but its operation in any place may at any time be suspended by the Lieutenant-Governor by notification in the said Gazette.

Interpretation clause.

2. In this Act, unless there be something repugnant in the subject or context,—

“Town of Calcutta.”

[³][“town of Calcutta” means Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888];^[4] Ben. Act 2 of 1888.

“Port of Calcutta.”

“port of Calcutta” means the Port of Calcutta subject to the jurisdiction of the Commissioners appointed under Bengal Act 5 of 1870, [⁵][or any other law for the time being in force];

* * * * *

[¹] For a list of notifications issued under this clause of s. 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] i.e., the 26th May, 1880—see Calcutta Gazette, 1880, Pt. III, p. 49.

[³] This definition was substituted for the original definition by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4 (1). The original definition ran thus:—“‘town of Calcutta’ includes all places within the local limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal.”

[⁴] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to clause (7) of s. 3 of the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

[⁵] These words in square brackets were added by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4 (2), post, p. 731. Ben. Act 5 of 1870 has been repealed and re-enacted by the Calcutta Port Act, 1890 (Ben. Act 3 of 1890), in the Bengal Code, 1913-15, Vol. II, p. 1013.

[⁶] The definition of “Suburbs of Calcutta” was repealed by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4 (3), and is omitted. It ran thus:—

“‘Suburbs of Calcutta’ means the suburbs defined by the notification of the 10th September, 1877, and published in the Calcutta Gazette of the 26th September, 1877.”

(Sec. 3.)

“parent” includes the father and mother of a legitimate child, and “Parent.” the mother of an illegitimate child;

“guardian” means any person to whom the care, nurture or custody “Guardian.” of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf;

“public vaccinator” means any vaccinator appointed under this Act, “Public vaccinator.” or any person duly authorized to act for such public vaccinator;

“medical practitioner” means any person duly qualified by a “Medical practitioner.” diploma, degree or license to practice in medicine or surgery, or specially licensed by the Lieutenant-Governor to practise vaccination and grant certificates under the provisions of this Act;

“unprotected child” means a child who has not been protected from “Unprotected child.” small-pox by having had that disease either naturally or by inoculation, or by having been successfully vaccinated, and who has not been certified under the provisions of this Act^[1] to be insusceptible of vaccination;

“unprotected person” includes a child who has no parent or guardian, “Unprotected person.” and means a person who has not been protected from small-pox by having had that disease either naturally or by inoculation or by having been successfully vaccinated, and who has been certified under the provisions of this Act^[1] to be insusceptible of vaccination;

“section” means a section of this Act. ^[2]

“Section.”

[3] VACCINATION OF CHILDREN.

3. The parent or guardian of every child born in any place to which this Act applies as above ^[4] provided, or may hereafter be extended, ^[4] shall, within one year after the birth of such child, and

the parent or guardian of every unprotected child under the age of fourteen years brought to reside, whether temporarily or permanently, in such place aforesaid,

shall, within six months after such child's arrival in such place, or, if the child be at the time of its arrival less than one year old, within one year and three months after its birth; and

^[1] See s. 6, *post*, p. 319.

^[2] In reference to the amendments made by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), it is declared by s. 2 of that Act (*post*, p. 727) that “unless there be something repugnant in the subject or context, ‘vessel’ includes anything made for the conveyance by water of human beings or of property.”

^[3] As to the application of ss. 3 to 10 to “unprotected persons,” see s. 12, *post*, p. 320.

^[4] See s. 1, *ante*, p. 315.

(Sec. 4.)

or living in such limits at the date of this coming to force, must procure their vaccination.

the parent or guardian of every unprotected child living in such place at the date of this Act coming into force therein, and whose age at such date exceeds one year but does not exceed fourteen years shall, within six months from the said date,

take it, or cause it to be taken, to a public vaccine-station to be vaccinated, or shall, within such period as aforesaid, cause it to be vaccinated by some medical practitioner or public vaccinator;

Unprotected child may be required to be vaccinated within fifteen days.

[¹][and the parent or guardian of every unprotected child may, whenever the Superintendent of Vaccination, as hereinafter[²] appointed, shall deem it expedient, be served with a notice, in the form prescribed in the first Schedule of this Act, requiring the parent or guardian, within fifteen days after the service of the same, to take such child, or cause such child to be taken, to a public vaccine-station to be vaccinated, or within such period as aforesaid to cause it to be vaccinated by some medical practitioner or public vaccinator;

and every such parent or guardian shall, within the said period, comply with the requisition];

Public vaccinator] bound to vaccinate all children brought to him.

and any public vaccinator to whom such child, or to whom any child under the age of fourteen years, is brought for vaccination at such vaccine-station, or who is requested to vaccinate such child elsewhere than at a public vaccine-station, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

Inspection.

4. [³]At an appointed hour on *the same day in the following week* after the operation shall have been performed, or on an earlier day, if required, the parent or guardian shall cause the child to be inspected by the operator, or by any person deputed for that purpose by the Superintendent of Vaccination, that the result of the operation may be ascertained;

[⁴]and it shall be the duty of any public vaccinator who has vaccinated a child elsewhere than at a public vaccine-station to visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not, unless the Superintendent of Vaccination has deputed some other person to act for such public vaccinator in this behalf.

Repetition of vaccination.

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the public vaccinator or medical practitioner so direct,

[¹] These clauses in square brackets were inserted in s. 3 by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 3, *post*, p. 727.

[²] See ss. 16, 25, *post*, pp. 322 and 324.

[³] This clause and the next clause (on this page) in s. 4 were substituted for the original paragraph by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 4, *post*, p. 727.

[⁴] See footnote [³] on this page.

(Secs. 5-8.)

cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

No fee shall be charged by a public vaccinator for anything done by him under this section.

5. If any *public vaccinator* or medical practitioner shall be of opinion that any child is not in a fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule A hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

If child be unfit for vaccination, certificate in Form A to be given.

The said certificate shall remain in force for *three months* only, but shall be renewable for successive periods of *three months* until the *public vaccinator* or medical practitioner shall deem the child to be in a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C hereto annexed, according to the provisions of section 7, if warranted by the result.

which shall remain in force for *three months*, but shall be renewable.

6. If any *public vaccinator* or medical practitioner shall find that a child *whom he has* three times unsuccessfully vaccinated is insusceptible of successful vaccination, or

that the child brought to him for vaccination has already been successfully inoculated or had the small-pox,

Provision for giving certificate of insusceptibility of successful vaccination.

he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B hereto annexed, or to the like effect;

and, if the Superintendent of Vaccination be satisfied that such child is insusceptible of successful vaccination, he shall endorse such certificate, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

7. Every public vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child,

and shall have ascertained that the same has been successful,

shall deliver to the parent or guardian of such child a certificate according to the form of Schedule C hereto annexed or to the like effect, certifying that the said child has been successfully vaccinated.

Provision for giving certificates of successful vaccination.

8. No fee or remuneration shall be charged by any public vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine-station.

No fee to be charged for vaccination at public vaccination station for certificates.

But, when a public vaccinator attends at the request of the parent or guardian elsewhere than at a public vaccine-station for the purpose

Proviso.

(Secs. 9-13.)

of vaccinating a child, he shall be paid a fee not exceeding eight annas; such fee to be devoted to the purposes in the next succeeding section mentioned.

Fees how to be appropriated.

9. All such fees shall, in Calcutta, be paid in by the public vaccinator to the credit of the Corporation of the Town of Calcutta,^[1] and be by them appropriated for the purposes of this Act.

In places outside Calcutta such fees shall be appropriated as the Lieutenant-Governor may from time to time direct.

Superintendent of vaccination or his assistants may inspect vaccination of child.

10. The Superintendent of Vaccination, as hereinafter^[2] appointed, or any of his assistants, may, from time to time, inspect the vaccination of any child, whether performed by a public vaccinator or medical practitioner; and may, if he think fit, direct that such child be forthwith again vaccinated.

VACCINATION OF UNPROTECTED PERSONS.

Unprotected persons to be vaccinated.

11. Every unprotected person may, whenever the said Superintendent of Vaccination shall deem it advisable, be served with a notice in the form in Schedule D hereto annexed, requiring him, within fifteen days after the service of the same, to submit himself to a public vaccinator or medical practitioner to be vaccinated; and every such person shall, within the said period, submit himself to a public vaccinator or medical practitioner for vaccination.

Former sections applicable.

12. The provisions of sections 3 to 10 (both inclusive) shall apply, with the necessary alterations, to the case of unprotected persons.

Health Officer of Port may cause vaccination of unprotected persons on their arrival.

13. The powers conferred by sections 11 and 30 upon the said Superintendent of Vaccination may, in the case of unprotected persons arriving in the port of Calcutta, be exercised by the Health Officer of the said port immediately upon their arrival.

Health Officer may, in certain cases, require immediate vaccination of unprotected person on board.

^[3]If a vessel arrives in the said port of Calcutta having on board any person suffering from the disease of small-pox, the said Health Officer may, if he deem it expedient in order to prevent the risk of the contagion of small-pox being conveyed into the town or suburbs of Calcutta, require any unprotected person on board such vessel to submit himself forthwith to be vaccinated; and every such person shall, before

^[1] The name of this body is now "the Corporation of Calcutta"—see the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), s. 6, in Vol. III of the Bengal Code.

^[2] See ss. 16, 25, *post*, pp. 322 and 324.

^[3] This paragraph and proviso in s. 13 were added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 5, *post*, p. 727.

(Secs. 13A.-15.)

leaving the vessel, submit himself to the said Health Officer, or any person duly authorized to act in this behalf, for vaccination :

[¹] Provided that nothing herein contained shall apply to any vessel *Proviso.* belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel belonging to any foreign Prince or State.

[²] MISCELLANEOUS.

[²] 13A. Every person occupying any house, enclosure, vessel or other place within the limits of the town or port of Calcutta, or the suburbs of Calcutta, or the town of Howrah, shall allow the Superintendent of Vaccination, or a medical practitioner, or public vaccinator duly authorized by him in this behalf, such access thereto as he may require for the purpose of ascertaining whether the inmates are protected or not, and as, having regard to the customs of the country, may be reasonable. *Occupier of house, etc., to allowances.*

Whenever it is necessary to ascertain whether a woman is protected or not, the investigation shall be conducted by a female with strict regard to the habits and customs of the country.

PROCEDURE APPLICABLE TO THE TOWN OF CALCUTTA ONLY.

14. For the purposes of this Act, the Corporation of the Town of Calcutta (hereinafter called the Corporation) [³] shall, subject to the approval of the Lieutenant-Governor, appoint [⁴] such stations for the performance of vaccination as they shall, from time to time, deem fit. *Public station.*

Such stations shall be called "public vaccine-stations."

The Corporation [³] shall appoint such public vaccinators and vaccination-establishments for carrying out the purposes of this Act as they shall, from time to time, deem fit. *Appointment of public vaccinators, etc.*

The positions of the public vaccine-stations fixed under the provisions of this section, and the days and hours of the public vaccinators' attendance at each station, shall be published, from time to time, in such manner as the Corporation [³] may direct. *Notification of stations and hours of attendance.*

[⁵] 15. The Corporation [³] may, from time to time, make such rules, consistent with this Act, as they may deem fit, for regulating the expenses *Power of Corporation to make rules.*

[¹] This paragraph and proviso in s. 13 were added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 5, *post*, p. 727.

[²] This heading and s. 13A were inserted by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 6, *post*, p. 727.

[³] As to the exercise, in areas outside Calcutta, of the powers conferred by this Act on the Corporation, *see* s. 25 and footnote [⁷] thereto, *post*, p. 224.

[⁴] For orders made under this clause of s. 14, *see* the Bihar and Orissa Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

[⁵] As to who is to exercise and perform, in areas outside Calcutta, the powers and duties assigned to the Superintendent of Vaccination, *see* s. 25, *post*, p. 224.

(Secs. 16-19.)

of such vaccination-establishments aforesaid, the payment of public vaccinators, and the realization and scale of fees under this Act.

Superintendent of Vaccination.

16. The Health Officer for the town of Calcutta shall be *ex-officio* Superintendent of Vaccination^[1] for the said town.

Such officer, subject to the orders of the Lieutenant-Governor, shall have a general control over all the proceedings of public vaccinators, and shall perform such duties in connection with public vaccination, in addition to those prescribed by this Act, as shall be required by the Lieutenant-Governor.

Assistant Superintendents.

The Lieutenant-Governor may appoint, if necessary, one or more assistants to the Superintendent, and, from time to time, remove any such assistant.

Expenses of establishments to be a charge on the Corporation.

17. The expenses of all vaccination-establishments under this Act, and of the supply of lymph, in Calcutta, shall, unless the Lieutenant-Governor otherwise direct, be defrayed by the Corporation.

REGISTRATION.

Registrar of Births to give notice of requirement of vaccination.

18. On the registration of the birth of any child under the provisions of Chapter X of the Calcutta Municipal Consolidation Act, 1876, or of any other law^[2] for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule E hereto annexed, or to the like effect; and such notice shall have attached thereto the several forms of certificates prescribed by this Act. Ben. Act 4 of 1876.

Duplicates of all certificates to be transmitted to the Registrar.

19. ^[3]Every *public vaccinator* or medical practitioner, who gives to any parent or guardian a certificate in any of the forms of the said Schedules A, B and C, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births^[3] of the district where the birth of the child on whose account such certificate was given has been registered;

or, if that be not known to him, or if the child was born out of the town of Calcutta, or his birth has not been registered in the said town,

[1] As to who is to exercise and perform, in areas outside Calcutta, the powers and duties assigned to the Superintendent of Vaccination, see s. 25, *post*, p. 324.

[2] Ben. Act 4 of 1876 was repealed and re-enacted by Ben. Act 2 of 1888, which again has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to Ch. XXXVIII of the latter Act—see the Bengal General Clauses Act, 1889 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

[3] For power to appoint other persons to perform the duties imposed on Registrars of Births under ss. 19 to 23, see s. 24, *post*, p. 323.

(Secs. 20-24.)

to the Registrar of the district within which the child was vaccinated or presented for vaccination.

20. The Registrar of Births^[1] shall keep a book, in such form as may from time to time be prescribed by the rules made under section 33, in which he shall enter minutes of the notices of vaccination given by him as herein required, and shall also register the duplicates of certificates transmitted to him as herein provided.

Registrar to keep a vaccination notice and certificate book,

Ben. Act 4 of 1876.

21. He^[1] shall also prepare and keep a duplicate of the register of births required to be kept by him under the provisions of the Calcutta Municipal Consolidation Act, 1876, or of any other law^[2] for the time being in force, with such additional columns as shall, from time to time, be prescribed by the rules made under section 33, in which he shall record the date of every duplicate certificate in the form of the said Schedule B or Schedule C received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated or is insusceptible of vaccination, as the case may be.

and also a duplicate register of births with entries concerning vaccination,

22. He^[1] shall also keep a register of postponed vaccinations in the form of Schedule F hereto annexed, in which he shall record the name of every child concerning whom he receives a duplicate certificate in the form of the said Schedule A, together with the date of such duplicate certificate, and of each such successive duplicate certificate if he receives more than one; and shall show the number and year of the entry, if any, in the register of births in which such child's birth has been registered.

and also a register of postponed vaccinations.

23. Every Registrar^[1] shall transmit, on or before the fifteenth of every month, to the Superintendent of Vaccination, a return, in such form as may, from time to time, be prescribed by the rules made under section 33, of all cases in which duplicate certificates have not been duly received by him, in pursuance of the provisions of this Act, during the last preceding month.

Transmission of returns to Superintendent.

24. The Lieutenant-Governor may direct that the duties imposed on the Registrar of Births under sections 19, 20, 21, 22 and 23 shall be performed by any other person appointed by the Lieutenant-Governor.

Lieutenant-Governor may direct any person to perform duties of Registrar.

[¹] For power to appoint other persons to perform the duties imposed on Registrars of Births under ss. 19 to 23, see s. 24, on this page.

[²] Ben. Act 4 of 1876 was repealed and re-enacted by Ben. Act 2 of 1888, which again has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to Ch. XXXVIII of the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

(Secs. 25-26.)

PROCEDURE APPLICABLE OUTSIDE THE TOWN OF CALCUTTA.

Powers of Corporation may be exercised in *mufassal* by Magistrate of the district; and of Superintendent of vaccination by Civil Surgeon.

25. In any municipality other than the town of Calcutta, and in any local area to which this Act may hereafter be extended,^[1] the Magistrate of the district^[2] may exercise all or any of the powers by this Act conferred upon the Corporation;

and the Civil Surgeon of the district, or such other officer as the Lieutenant-Governor may, from time to time, appoint in that behalf, shall exercise the powers and perform the duties by this Act assigned to the Superintendent of Vaccination.

PROSECUTIONS AND OFFENCES.

Magistrate may make an order for the vaccination of any unprotected child under fourteen years.

26. If the Superintendent of Vaccination shall notify in writing to a Magistrate that he has reason to believe, from the statement of an informant or otherwise, that any child under the age of fourteen years is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him; and if the Magistrate shall find, after such inquiry as he shall deem necessary, that the child is an unprotected child, he may, whether the child has been produced or not, make an order directing such child to be vaccinated within a certain time.

If the child is at any time produced before him, the Magistrate may, unless the child is certified under section 5 to be in a state unfit for vaccination, order it to be vaccinated forthwith in his presence, and in that case may punish such parent or guardian, for any recusancy under this clause, with fine which shall not exceed five rupees.

Penalty for disobedience of such order.

If, at the expiration of the time appointed by the Magistrate, the child shall not have been vaccinated, or shall not be shown to be then unfit to be vaccinated, or to be insusceptible of vaccination, the person upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine which may extend to fifty rupees:

Proviso for costs to persons improperly summoned.

Provided that, if the Magistrate shall be of opinion that the person is improperly brought before him, and shall refuse to make an order for the vaccination of the child, he may direct the said Superintendent to disclose the name of his informant, if any, and may order such

^[1] See s. 1, *ante*, p. 315.

^[2] As to the exercise by District Boards of powers of appointment, etc., of public vaccinators and of Inspectors of Vaccination (to exercise the functions of the Superintendent of Vaccination), and powers of the District Magistrate, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), ss. 92 to 94, *post*, p. 687.

(Secs. 27-29.)

informant to pay to such person such sum of money as the Magistrate shall consider a fair compensation for expenses and loss of time in attending before him :

Provided also that nothing in this section shall be held to compel the production before a Magistrate of any female child above the age of eight years.

27. If any parent or guardian intentionally omits to produce a child whom he has been summoned to produce under the last preceding section, he shall be liable to fine which may extend to one hundred rupees and to a further fine of twenty-five rupees for every day during which the offence continues: Penalty for not producing a child.

Provided that the aggregate amount of fine for such offence shall not exceed one thousand rupees.

28. Whoever, in contravention of this Act,—

- (a) neglects without reasonable excuse to submit himself, within fifteen days after the service on him of the notice prescribed by section 11, to a public vaccinator or medical practitioner to be vaccinated, or after vaccination to be inspected, Penalty for neglect to be vaccinated.
or
- (b) neglects without reasonable excuse to take or cause a child to be taken to be vaccinated, or after vaccination to be inspected, Penalty for neglect to take child to be vaccinated, etc.
or
- (c) neglects to fill up and sign and give to any person or to the parent or guardian of any child any certificate which such person, parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births,^[1] or
- ^[2](d) refuses without reasonable excuse to submit himself to be vaccinated when required so to do by the Health Officer exercising the powers conferred upon him by section 13.

shall be punished for each such offence with fine which may extend to fifty rupees.

No prosecution under this section shall be instituted after the expiry of twelve months from the date on which the offence has been committed.

29. Whoever wilfully signs or makes, or procures the signing or making of, a false certificate or duplicate certificate under this Act, Penalty for making or signing false certificate.

^[1] This word "or," in s. 28 (c), was added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 7, *post*, p. 727.

^[2] This clause (d) was added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 7, *post*, p. 727.

(Secs. 29A-32.)

shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code,^[1] for a term which may extend to 45 of 1860. six months, or with fine which may extend to one hundred rupees, or with both.

Penalty for obstructing public vaccinator in the discharge of his duties.

[²]29A. Whoever voluntarily obstructs any public vaccinator in the discharge of the duties assigned to him as such shall be punished for each such offence with fine which may extend to fifty rupees.

Vexatious entry by public vaccinator.

[²]29B. Any public vaccinator who vexatiously and unnecessarily enters any house, enclosure, vessel or other place, on pretence of ascertaining whether the inmates, or any of them, are protected or not, shall, for every such offence, be punished with fine which may extend to fifty rupees.

Prosecutions to be instituted by Lieutenant-Governor or Superintendent of vaccination.

30. All offences under this Act shall be cognizable by a Magistrate, subject to the provisions of any law^[3] for the time being in force for the trial of offences; but no complaint of any such offences shall be entertained unless the prosecution be instituted by order of, or under authority from, the Lieutenant-Governor or the Superintendent of Vaccination.

Prosecution for neglect.

31. In any prosecution for neglect to procure the vaccination of a child it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar or any other officer of the requirements of the law in this respect;

but, if the defendant produce any such certificate as hereinbefore described, or the duplicate of the register of births or the register of postponed vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate according to the form of the said Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

MISCELLANEOUS.

Annual return to be made of the number of children vaccinated, etc.

32. It shall be the duty of the Superintendent of Vaccination to show in an annual return the number of children successfully vaccinated, the number whose vaccination has been postponed, and the number certified to be insusceptible of successful vaccination during the year; and

[¹] See Act 45 of 1860, s. 53, in General Acts, 1834—67, Ed. 1909, p. 258.

[²] Sections 29A and 29B were inserted by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 8, *post*, p. 727.

[³] See now the Code of Criminal Procedure, 1898 (5 of 1898), in General Acts, 1898—1903, Ed. 1909, p. 38.

(Sec. 33. The First Schedule.)

generally to fill up any forms that may be prescribed, from time to time, by the Lieutenant-Governor^[1] or the Corporation.

33. The Lieutenant-Governor may, from time to time make rules^[1] or issue orders,^[2] consistent with this Act,—

- (a) determining the qualifications to be required of public vaccinators;
- (b) regulating the scale of fees to be paid outside the town of Calcutta;
- (c) regulating the gratuitous vaccination of such females as are by the custom of the country unable to attend at the public vaccine-stations and are too poor to pay fees;
- (d) providing for the supply of lymph;
- (e) regulating the books and forms to be kept by the public vaccinators or by Registrars, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act; and generally.
- (f) for the guidance of public vaccinators and others in all matters connected with the working of this Act.

All such rules or orders shall be published in the Calcutta Gazette.

[³]THE FIRST SCHEDULE.

(See section 3.)

To

(Here insert the name of the parent or guardian.)

TAKE notice that you are hereby required, under the provisions of the Bengal Vaccination Act, 1880, to take, or cause (*here insert the name of the child*), the child of (*here insert the name of the father*), to be taken to a public vaccine-station for vaccination, or to cause it to

[¹] For rules made under s. 33, see the Bihar and Orissa Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

[²] As to the local extent of rules and orders issued under s. 33 for Calcutta, and as to the power of the Local Government to modify or cancel such rules and orders, see the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 5, *post*, p. 727.

As to the power of the Commissioner to make rules for the guidance of District Boards in matters relating to vaccination, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 95, *post*, p. 688.

[³] This Schedule was annexed to this Act by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 3, as amended by the Amending Act, 1897 (5 of 1897)—see *post*, p. 727.

(Schedule A.)

be vaccinated by some medical practitioner or public vaccinator within fifteen days from the service of this notice, and that in default of so doing you will be liable to a fine of fifty rupees.

The public vaccine-station nearest your house is at _____; the days and hours for vaccination at that station are as follows:—

(Here insert the days and hours when the public vaccinator is in attendance.)

On the said (*here insert the name of the child*) being brought before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the town on the days, and within the hours prescribed for public vaccination at such station, the said (*here insert the name of the child*) will be vaccinated free of charge.

If you wish the said (*here insert the name of the child*) to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the _____ of _____, 18 ____.

*Superintendent of Vaccination,
or Civil Surgeon (as the case may be).*

SCHEDULE A.

(See section 5.)

I, the undersigned, hereby certify that, in my opinion _____, the child of _____, resident at _____, is not now in a fit and proper state to be vaccinated, and I do hereby recommend that the vaccination be postponed for the period of three months from this date.

Dated the day of , 18

(Signature of Medical Practitioner or *Public Vaccinator*.)

(Schedules B, C and D.)

SCHEDULE B.

(See section 6.)

I, the undersigned, hereby certify that I have three times unsuccessfully vaccinated _____, the child of _____, residing at _____ (or that the child has already had small-pox, as the case may be),

and I am of opinion that the said child is insusceptible of successful vaccination.

Dated the _____ day of _____, 18 .

(Signature of Medical Practitioner or *Public Vaccinator*.)

(Endorsement by Superintendent of Vaccination.)

SCHEDULE C

(See section 7.)

I, the undersigned, hereby certify that _____, the child of _____, age _____, resident at _____, has been successfully vaccinated by me.

Dated this _____ day of _____, 18 .

(Signature of Medical Practitioner or *Public Vaccinator*.)

SCHEDULE D.

(See section 11.)

TAKE notice that you are hereby required, under the provisions of the Bengal Vaccination Act, 1880, to submit yourself to a public vaccinator or medical practitioner within fifteen days from the service of this

(Schedule E.)

notice for vaccination, and that in default of so doing, you will be liable to a fine which may amount to fifty rupees.

The public vaccine-station nearest your house is at

The days and hours for vaccination at that station are as follows:—

(Here insert the days and hours when the public vaccinator is in attendance.)

On your attending before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the town on the days and within the hours prescribed for public vaccination at such station, you will be vaccinated free of charge.

If you wish to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the of, 18

*Superintendent of Vaccination,
or Civil Surgeon (as the case may be).*

SCHEDULE E.

(See section 18.)

To

(Here insert the name of the parent, guardian, or other person who gives information of the child's birth.)

TAKE notice that the child of (here enter the mother's name), whose birth has this day been registered, must be vaccinated, under the provisions of the Bengal Vaccination Act, 1880, within one year from the date of its birth, under penalty.

The public vaccine-station nearest to the house in which the child was born is at No. The days and hours for vaccination at that station are as follows:—

(Here insert the days and the hours when the public vaccinator is in attendance.)

On your taking or causing the child to be taken to the public vaccinator at the said station within the said hours on any of the said days,

(Schedule F.)

or at any other public vaccine-station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

If you wish to have the child vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of .

You should be careful to have one of the annexed forms of certificate filled in by *the Public Vaccinator*, or, if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a *Public Vaccinator* free of charge.

Dated the of , 18 .

Registrar of Births.

SCHEDULE F.

(See section 22.)

Register of Postponed Vaccinations for the district of

Consecutive number.	Name of child.	BIRTH.		Date of certificate of postponement.	Signature of Registrar.
		Year.	Number of entry in register.		
1	Ram Chunder Das . . .	1870	12	1878 May. . . . 10	H. O.

BENGAL ACT 6 OF 1880.

(THE BENGAL DRAINAGE ACT, 1880.)

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SCHEDULE B.

BENGAL ACT 6 OF 1880.

(THE BENGAL DRAINAGE ACT, 1880.)^[1]

(9th June, 1880.)

An Act to provide for the drainage and improvement of lands.

Whereas it is expedient that provision should be made for the better Preamble.
drainage and improvement of lands in the territories administered by
the Lieutenant-Governor of Bengal;^[2] It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called The Bengal Drainage Act, 1880: Short title.

It extends to all the territories for the time being under the admini- Extent.
stration of the Lieutenant-Governor of Bengal.^[2]

(Commencement). *Rep. by the Amending Act, 1903 (1 of 1903).*

2. Bengal Act 5 of 1871 (*the Hooghly and Burdwan Drainage Act*) shall be repealed on and from the date upon which this Act comes into force; but, subject to the provisions of this Act, this repeal shall not affect the past operation of such Act, or anything duly done or suffered, or any right, privilege, obligation or liability acquired, accrued or incurred thereunder. Repeal of Bengal Act 5 of 1871.

3. In this Act, unless there be something repugnant in the subject or context,— Interpretation clause.

“the Collector” means the officer in charge of the revenue jurisdiction of the district within which the lands which form the subject of a scheme under this Act, or the greater portion of such lands, are situate. “The Collector.”

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1879, Pt. IV, p. 64; for Report of Select Committee, see *ibid*, 1880, Pt. IV, p. 100; and for Proceedings in Council, see *ibid*, 1879, Supplement, pp. 331, 391 and 1448; *ibid*, 1880, Supplement, pp. 286, 394 and 409.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 1.

It is in force in the Sonthal Parganas—see Vol. IV, Pt. VI; but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—As to the drainage of rural areas, see also the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876), *ante*, p. 201, and the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), in Vol. III of this Code.

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any embankment, land or water-course which is under the operation of Bengal Act 6 of 1880—see Bengal Act 2 of 1882, s. 91, *post*.

^[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

(Sec. 3.)

If any doubt arises as to whether the greater portion of the lands is situate within one or two or more districts, the Board of Revenue^[1] shall decide the point, and such decision shall be final:

“Certificate officer.”

[²] “Certificate officer” means a Certificate officer as defined in clause (2) of section 4 of the Public Demands Recovery Act, 1895.^[3]

Ben. Act 1 of 1895.

“The Commissioners.”

“the Commissioners” means the Drainage Commissioners to be appointed under this Act:

“Estate.”

“estate” means land included under one entry in the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law^[4] for the time being in force by any Collector of a district, or a share of, or interest in, such land:

“Proprietor.”

“proprietor” means a person who as owner is solely or jointly in possession of an estate:

“Tenure.”

“tenure” means—

(1) a permanent rent-paying interest in land immediately subordinate to that of a proprietor and superior to that of a *raiyat*, extending to not less than one hundred standard *bighas*, affected, or to be affected, by any works under this Act;

(2) a permanent revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists no rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

“Under-tenure.”

“under-tenure” means—

(1) a permanent rent-paying interest in land subodinate to that of a tenure-holder and superior to that of a *raiyat*, extending to not less than one hundred standard *bighas*, affected or to be affected by any works under this Act;

(2) a revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists a rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[²] This definition of “Certificate officer” was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 2, in Vol. III of this Code.

[³] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to cl. (3) of s. 3 of the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

[⁴] See the Land Registration Act, 1876 (Ben. Act 7 of 1876), *ante*, p. 235.

(Sec. 4.)

Explanation.—The term “ permanent ” is used with reference to the tenure or under-tenure itself, and not with reference to the person who happens to hold such tenure or under-tenure for the time being. A tenure or under-tenure is none the less permanent, although held by a Hindu widow, a *Sebait* or a person subject to the *Mitakshara* law :

“ landholder ” and “ holder of land ” means—

(1) any person who as owner of an estate is solely or jointly in possession thereof;

(2) any person who as owner of a tenure or under-tenure is solely or jointly in possession thereof:

“ Landholder ” and “ holder of land. ”

where two or more persons are joint landholders, they shall be jointly and severally liable under this Act, except as is otherwise expressly provided herein :

“ reclaimed land ” means land which was unfit for cultivation before the execution of any works under this Act, but which has been rendered productive by such works : “ Reclaimed land. ”

“ improved land ” means land which was more or less fit for cultivation before the execution of any works under this Act, but of which the productive powers have been increased by such works : “ Improved land. ”

“ Part ” and “ section ” mean, respectively, a Part and section of this Act. “ Part ” and “ section. ”

PART I.

APPOINTMENT OF COMMISSIONERS AND CONDUCT OF BUSINESS.

4. Whenever it appears expedient to the Lieutenant-Governor to carry out any scheme and plans for the drainage and improvement of any tract of land, the Lieutenant-Governor may appoint^[1] any number of persons, not less than seven, of whom the majority shall be qualified by being holders of lands to be affected by the works mentioned in the said scheme and plans, or managers on behalf of such holders, to be Drainage Commissioners for carrying out the provisions of this Act; Lieutenant-Governor to appoint Commissioners.

and the Lieutenant-Governor may, from time to time, remove or accept the resignation of any such Commissioner, or may add to the number of the Commissioners, and may appoint another person in the place of any such Commissioner dying, resigning, being removed or ceasing to reside in the district in which such lands are situate, but so as that the majority of the Commissioners shall always be persons qualified as aforesaid.

No act done or proceeding taken by the Commissioners shall be invalid merely on the ground that at the time of doing such act or of taking

[¹] For a list of appointments made under s. 4 for Bengal as constituted on the 31st March, 1912, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 5-9.)

such proceeding the majority of the Commissioners were not persons qualified as aforesaid.

Lieutenant-Governor to appoint Chairman.

5. The Lieutenant-Governor shall from time to time appoint^[1] one of the persons so appointed Commissioners as aforesaid to be Chairman of the Commissioners, and may at any time, if he see fit, revoke such appointment and appoint another of such persons to be Chairman.

Commissioners may sue and be sued in his name.

The Commissioners may sue and be sued in the name of their Chairman.

Meetings of Commissioners and quorum.

6. The Commissioners shall ordinarily meet for the transaction of business once at least in every quarter.

Such meeting shall be held upon such day and at such hour as the Commissioners shall from time to time determine.

No business shall be transacted at any meeting unless at least three members are present at the commencement and close of such business.

Extraordinary meetings.

7. The Chairman of the Commissioners may, whenever he thinks fit, and shall, upon request made in writing by three of the Commissioners, call an extraordinary meeting of the Commissioners.

Presidency of meetings.

8. The Chairman shall preside at every meeting of the Commissioners; but, in case of his absence at the time appointed for holding a meeting, the Commissioners present may choose one of their number to be President of such meeting.

Transaction of business at meetings.

9. (1) All questions at any meeting, including the question of adjourning such meeting, shall be decided by a majority of votes of the members present. In case of an equality of votes the President for the time being of such meeting shall have a second or casting vote.

Delegation of powers to Committee.

(2) The Commissioners may delegate any of their powers to Committees consisting of such member or members of the body as they think fit. Any Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Commissioners.

Election of Chairman of Committee.

(3) A Committee may elect a Chairman at their meetings. If no Chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be Chairman of the same.

Adjournment, voting, etc., of Committee.

(4) A Committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the

[¹] For a list of appointments made under s. 5 for Bengal as constituted on the 31st March, 1912, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 10-14.)

members present, and in case of an equal division of votes the Chairman shall have a second or casting vote.

10. The Chairman of the Commissioners may, by an order in writing, appoint and dismiss such servants and officers, other than engineers and their subordinates, as may be required for the purposes of this Act; and he may control them as he shall see fit.

Power to
appoint
servants.

There shall be paid to such servants and officers, respectively, such salaries as may appear to the Commissioners to be proper.

11. The Lieutenant-Governor may, when satisfied that the objects of their appointment have been fulfilled, direct that the powers and functions of the Commissioners shall cease.

When objects
of their
appointment
fulfilled,
Lieutenant-
Governor
may direct
Commission-
ers' powers
and function
to cease.

PART II.

DRAINAGE SCHEME.

12. The Commissioners shall, within three months after their appointment, cause a notification, in the language of the district, to be published by beat of drum in every village in which may be situate any portion of the lands to be affected by the works proposed in such scheme and plans.

Commission-
ers to cause a
notification of
the scheme
to be
published.

Every such notification shall be in the form in Schedule A hereto annexed, and shall further be published by posting the same at the office of the Collector and of the Sub-divisional Officer, and in some conspicuous part of the village aforesaid, and at the Court of the *Munsif* within whose jurisdiction, and at the *thana* within the limits of which such village is situate.

13. After the date named in such notification a list of the persons who may have given their assent or made any objection in writing in accordance with such notification shall be prepared and published, in the manner provided in section 12, for the information of all concerned.

List of
persons
assenting or
objecting to
be published.

Such list shall contain a specification of the land in respect of which such persons claim to vote as landholders, and of the titles in virtue of which they claim to vote, respectively; and there shall be appended thereto a notice that objections to the right of voting so claimed must be lodged with the Commissioners within one month after the publication of the said list.

14. (1) The Commissioners may, at some meeting to be held not less than one month after such list has been published under the provisions of section 13, proceed to ascertain whether the holders of half of the

Commission-
ers how to
ascertain
what pro-

(Sec. 15.)

prietors have
assented.

lands to be reclaimed or improved have assented in writing to the adoption of the scheme.

For the purpose of so ascertaining, the Commissioners shall take into account the vote of not more than one landholder in respect of any one portion of the area affected; and, whenever more than one landholder shall have given his vote in respect of the same portion of such area, the Commissioners shall take into account the vote of the landholder who holds the lowest interest in respect of such area, and shall not take into account in respect of such area the vote of any superior landholder who may have voted.

Example—

A gives his vote as proprietor of 5,000 *bighas*;
B, as *patnidar* of 2,000 *bighas* included in A's proprietary of 5,000 *bighas*;
C, as *mukarraridar* of 100 *bighas* included in B's *patni*;
D, as holding a permanent *jama* of 500 *bighas* included in A's proprietary of 5,000 *bighas*; but not in B's *patni* of 2,000 *bighas*:

the Commissioner shall take into account the votes of the respective landholders in respect of the following areas :—

	<i>Bighas.</i>
D for	500
C for	100
B for (2,000-100=)	1,900
A for (5,000-2,000-500=)	2,500
TOTAL	5,000

Vote for
estate, tenure,
etc., held by
two or more
co-sharers.

(2) One vote only shall be allowed in respect of an estate, tenure or under-tenure belonging to two or more co-sharers.

In order to ascertain whether this vote shall be taken as assenting or objecting to the adoption of the scheme, regard shall be had to the votes of the co-sharers individually, and account shall be taken of those only who actually vote.

If the majority assent, a vote of assent shall be deemed to have been given in respect of the estate, tenure or under-tenure.

If the majority object, a vote of objection shall be deemed to have been given.

If the number assenting and the number objecting are equal, no vote shall be deemed to have been given in respect of such estate, tenure or under-tenure.

Persons
voting to
specify the
extent of
their lands.

15. The Commissioners may, in their discretion, refuse to take into account the vote of any person who, after being required to do so, fails to specify the extent of land held by him and the nature of the interest which he has in such land.

(Secs. 16-19.)

16. (1) Whenever the right of any person to vote as a holder of any land shall be disputed, the Commissioners shall determine whether the vote of such person shall or shall not be accepted in respect of such land; and their determination shall be final for the purposes of section 17: Commissioners to decide who is entitled to vote.

*Ben. Act 7
of 1876.*

Provided that any "recorded proprietor," as defined by section 3 of the Land Registration Act, 1876,^[1] shall be entitled to vote in respect of any property of which he is the recorded proprietor.

*Ben. Act 9
of 1879.*

(2) In the case of a landholder who is a proprietor disqualified to manage his own property under the provisions of the Court of Wards Act, 1879,^[1] or any similar law for the time being in force, or who is a minor or a lunatic, the right to vote shall be exercised by any manager of the property of such disqualified proprietor or minor or lunatic, appointed by the Court of Wards, or by the Civil Court under the provisions of any law for the time being in force, or, where no such manager has been appointed, by any person who, in the opinion of the Commissioners, duly represents the interests of such minor or lunatic. Vote for property held by a minor or lunatic.

(3) Where the holder of any land cannot be found, such land shall be altogether excluded in any computation that may be made in order to determine whether the landholders of not less than half of the area to be reclaimed or improved have assented to the adoption of the scheme. Case of landholder not found.

17. If the landholders of not less than half of the area to be reclaimed or improved, ascertained as above provided, shall have assented to the adoption of the scheme, and not otherwise, the Commissioners shall proceed to consider such scheme, together with the plans and estimates for carrying out the same, and shall further consider such objections as have been made thereto; and may adopt such schemes,^[2] plans and estimates or may alter and modify the same and adopt the scheme, plans and estimates so altered or modified, or may disapprove or reject the same. If half of landholders agree, Commissioners to consider the scheme submitted.

18. If the landholders of half of the area to be reclaimed and improved do not assent to such scheme, but the landholders of half the area to be affected by some portion of such scheme assent thereto, the Commissioners may re-submit such portion of the scheme to the Lieutenant-Governor, and may, with his approval, proceed thereupon in manner aforesaid. Power to proceed with portion of scheme.

19. If the Commissioners adopt such scheme, plans and estimates, or any modification or alteration thereof, they shall, within one month after such scheme, plans and estimates, or some modification or alteration thereof, have been adopted by them, cause the same to be laid before the Lieutenant-Governor; Scheme approved by Commissioners to be laid before the Lieutenant-Governor.

^[1] Printed, *ante*, p. 287.

^[2] *Sic. Read* scheme.

(Secs. 20-22.)

and the Lieutenant-Governor may sanction the scheme, plans and estimates so adopted, or any portion thereof, as to him shall seem fit.

Power to re-consider scheme and modify it.

20. (1) The Commissioners may, with the previous assent of the Lieutenant-Governor, at any time re-consider any scheme, plans or estimates adopted by them, and add to, alter or modify the same;

and, when any addition, alteration or modification has been adopted by them, they shall cause the same to be laid before the Lieutenant-Governor.

The Lieutenant-Governor may sanction such addition, alteration or modification, or any portion thereof, as he may think fit;

and, thenceforth the provisions of this Act shall apply to such addition, alteration or modification as if it had been a portion of the original scheme, plans or estimates; and every such addition, alteration or modification, after it has been adopted, shall be published by the Commissioners as to them shall seem fit.

No such addition, alteration or modification shall be adopted at a meeting at which the majority of the members present are not qualified as provided by section 4.

Publication of modified scheme.

(2) No addition, alteration or modification, under clause (1), to or of any scheme which affects any lands other than those which would be affected by some scheme theretofore published, shall be adopted by the Commissioners until the same has been published, for not less than fifteen days, according to the provisions of section 12, in every village in which may be situate any portion of the lands to be affected by such addition, alteration or modification;

nor shall any such addition, alteration or modification be adopted unless the landholders of not less than half the entire area to be affected by the scheme as so added to, altered or modified, assent to the same.

Power for the acquisition of land.

21. When the Lieutenant-Governor has sanctioned any scheme, plans and estimates as aforesaid, or some portion thereof, he may direct proceedings to be taken under the provisions of the Land Acquisition Act, 10 of 1870¹ 1870, or any other law^[1] for the time being in force for the acquisition of land for public purposes, in order to obtain any land likely to be required for the works mentioned in such sanctioned scheme, plans and estimates, or any portion thereof.

Lieutenant-Governor may order scheme to be carried out.

22. The Lieutenant-Governor may, if he thinks fit, order the works specified in such sanctioned scheme, plans and estimate, or portion thereof, to be executed by an officer to be thereunto appointed by the Lieutenant-Governor;

[¹] See now the Land Acquisition Act, 1894 (1 of 1894), which repeals and re-enacts the Act of 1870. The Act of 1894 is printed in the General Acts, 1887-97, Ed. 1909, p. 363.

(Secs. 23-24.)

and may, subject to the sanction to the Governor General of India in Council, order the advance from the public funds of such sum of money as may be required for the purpose of making such improvements;

and such officer may cause the works specified in such scheme and plans to be executed, and for that purpose may by himself, his agents and workmen enter into or upon any lands and perform such works thereupon as may be required.

23. The Lieutenant-Governor may, at any time after the said works have been commenced, by an order sanction any alteration or modification of such scheme or plan suggested to him by the officer in charge of such works, if after communication with the Commissioners it shall appear to him that by such alteration or modification the general character and scope of the scheme will not be altered, nor greater expenditure incurred thereon than would be incurred in the scheme as originally sanctioned; Power to Lieutenant-Governor to modify scheme.

and, after such sanction, such alteration or modification shall be taken to be a portion of the scheme adopted by the Commissioners, in substitution for the portion of such scheme thereby altered;

and every such alteration or modification shall be published by the Commissioners as to them shall seem fit.

24. (1) Any person who alleges that damage has been caused to his property by any scheme or works commenced or carried out under this Act may, at any time before the expiry of the three years mentioned in clause (1) of section 28 prefer to the Commissioners a claim for compensation in respect of such damage actually caused, and of all future damage likely to be caused, to such property by such scheme or works. Claims to compensation for damage caused in carrying out scheme or works.

The Commissioners shall duly consider any such claim; and, if they are satisfied that such damage has been caused or is likely to be caused, they shall assess such compensation as to them appears fair and reasonable. Compensation to be assessed by the Commissioners.

If such person agrees to accept the amount so assessed, the same shall be paid to him.

If he do not agree to accept such amount, the Commissioners shall make a reference to the Civil Court in the manner in which a Collector is empowered to make a reference by section 15 of the Land Acquisition Act, 1870^[1] and the provisions of Part III of the said Act shall apply to any reference so made. Reference to Civil Court if amount assessed be not accepted.

(2) When the persons interested in such property, to which damage has been caused as aforesaid, agree to accept the amount of compensation, Reference to Civil Court where amount of compensation agreed to or settled by Court,

[1] These references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)—see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 25-26A.)

but dispute
as to its
apportion-
ment.

tion assessed by the Commissioners, but a dispute arises as to the apportionment of the same or any part thereof,

or when the amount of compensation has been settled by the Court on a reference under clause (1) of this section, and a similar dispute arises,

the Commissioners shall refer such dispute to the decision of the Civil Court;

and the provisions of Part IV of the said Land Acquisition Act^[1] 10 of 1870. shall apply to any reference so made.

Reference
may in cer-
tain cases be
transferred to
Subordinate
Judge or
Munsif for
disposal.

(3) When the amount of compensation assessed by the Commissioners does not exceed one thousand rupees, any reference made under the said clause (1) may be transferred by the principal Civil Court of original jurisdiction of the district to any Subordinate Judge in the same district; and such Subordinate Judge shall have power to hear and dispose of the same;

and any reference made under clause (2) of this section may be transferred by such principal Civil Court to any *Munsif* in the same district, and such *Munsif* shall have power to hear and dispose of the same.

PART III.

EXPENDITURE AND APPORTIONMENT.

Cost of com-
pensation,
etc., to be
deemed part
of expense
of construc-
tion. Such
expense may
be defrayed
by advances
from the
public funds.

25. All amounts paid as compensation for any lands taken for the purposes of this Act, or for damage inflicted in carrying out any scheme or works under this Act, or as salaries of officers, servants or establishments, or for surveys or valuations (whether antecedent or subsequent to the preparation of the scheme and plans), and all amounts otherwise duly expended in carrying out the purposes of this Act, shall be included in, and deemed to constitute the cost of, construction of the works, and may be defrayed by advances from the public funds as provided by section 22.

Interest to be
charged on
such ad-
vances.
Rate of
interest, and
barring of
compound
interest.

[²]26. Interest shall be charged on all such advances until the same have been recovered.

[²]26A. (1) In every case in which the charging of interest is authorized by this Act, the rate chargeable shall be four *per centum per annum*.

[¹] These references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)—see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1909, p. 364.

[²] These ss. 26 and 26A were substituted for the original s. 26 by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 3, in Vol. III of this Code.

(Secs. 27-28.)

(2) No compound interest shall be charged in any case.

Explanation.—The interest recoverable from a tenant under section 42, clause (b), section 43, clause (b), section 44 or section 44A shall not be deemed to be “compound interest” within the meaning of this section, although it includes simple interest upon interest which has been paid by a landholder or superior tenant in pursuance of this Act.

27. The officer in charge of the said works shall, until the same shall be finally completed, once in every three months make a detailed report to the Commissioners of the progress of such works and the expenditure thereupon from the day up to which the next preceding report shall have been brought down;

Reports to be made and expenditure certified.

and the Examiner of Public Works Accounts to the Government of Bengal, or some other officer authorized in that behalf by the Lieutenant-Governor, shall from time to time certify the sums advanced in accordance with the provisions of section 25, and the dates of such advances;

and every such certificate shall be final and conclusive evidence in a Civil Court, or in any proceedings under this Act, of the sums therein stated to have been advanced having been so advanced, and of the dates upon which they were respectively so advanced.

28. (1) The officer in charge of the works shall, as soon as they have been completed, certify such completion to the Commissioners;

Commissioners upon expiry of three years from completion report to classify lands benefited by the works, distinguishing between improved lands and reclaimed lands.

and the Commissioners shall, upon the expiry of three years from such completion being so certified to them, proceed to classify all the lands benefited by the works according to the degree of benefit conferred; and in such classification they shall distinguish the improved lands from the reclaimed lands.

It shall be lawful for the Commissioners at any time during such three years to make such inspections of the lands, and such surveys thereof, and otherwise to collect such information, as shall in their opinion conduce to the making of such classification and of the apportionment hereinafter mentioned.

(2) The Commissioners shall, after making such classification, proceed further to apportion the total cost of construction, together with [interest] upon the improved lands and reclaimed lands, and shall draw up a statement showing the amount payable to the Collector by each landholder—

Cost of construction, with interest, to be apportioned upon the improved lands and reclaimed lands.

(a) in respect of his improved lands, if any, and

(b) in respect of his reclaimed lands, if any.

[1] The word “interest” in s. 28 (2) was substituted for the words and figures “the interest mentioned in s. 26” by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 4, in Vol. III of this Code.

(Secs. 29-32.)

Amount payable for the improved lands not to exceed value of improvement.

In making this apportionment the Commissioners shall, as far as may be possible, make payable in respect of each plot or field of improved land a sum not exceeding the amount of the increased capitalized value which, in the opinion of the Commissioners, has been conferred on such land by the works.

29. (*Adjustment of excess or deficient payments of interest*). Rep. by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5.

When the land is part of a tenure, etc., Commissioners may declare who shall be deemed liable as landholders.

30. Whenever any land, in respect of which any sum is apportioned as payable under the provisions of section * *^[1] 28, forms part of a tenure, and of a tenure and of an under-tenure, it shall be lawful for the Commissioners to declare whether the holders of the estate, of the tenure or of the under-tenure shall be deemed to be the landholders liable to pay to the Collector the sum apportioned as payable in respect of such land.

Amounts made payable to be a charge upon the improved lands and reclaimed lands respectively.

31. The total sum so made payable in respect of the improved lands of any one landholder, and the total sum so made payable in respect of the reclaimed lands of any one landholder with interest * * *^[2] from the date of apportionment, * * *^[3] shall be a first charge upon such improved lands and upon such reclaimed lands respectively.

Secretary of State for India in Council to have a perpetual lien for their recovery. Commissioners to report apportionment.

Such charge shall not be avoided by the sale of such lands or of any estate, tenure or under-tenure within which they are included, for arrears of revenue or rent.

32. The Commissioners shall, so soon as conveniently may be after having apportioned the sums to be payable by the holders of the lands of any village respectively, make and publish a report describing the several lands in respect of which they have declared such sums to be payable, the names of the respective holders thereof who have been made liable to pay the same to the Collector, and the sum payable by each in respect of the same.

Every such report shall distinguish between the reclaimed lands and the improved lands, and shall classify the latter according to the extent of the improvement.

A copy of such report shall be sent through the Collector to the Commissioner of the Division, for confirmation by such Commissioner.

[¹] The figures and word "26 or," were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

[²] The words "upon such sums at five per centum per annum," were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

[³] The words and figures "and any interest payable under s. 29, and any interest payable under clause (1) of s. 26, but not paid or recovered before the apportionment under s. 28," were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

(Secs. 33-35.)

33. If the Commissioners shall, for the space of three months after the completion of the entire works has been certified to them as aforesaid, neglect or refuse to proceed with the apportionment of the sums payable as aforesaid, or to make such report as aforesaid,

In default of Commissioners, officer appointed by Lieutenant-Governor to make apportionment and report.

or, for the space of two months after any report and apportionment shall have been returned to them for further consideration and revision under the provisions hereinafter contained, neglect or refuse to proceed to such further consideration and revision as is required,

the Collector may serve them with a notice requiring them to proceed as aforesaid;

and, if for one month after service of such notice they neglect so to proceed, the Lieutenant-Governor may appoint such officer or officers as to him shall seem fit, to make or consider and revise such apportionment and report, and to do all or any of the subsequent acts which the Commissioners are hereby required or empowered to do in respect of such apportionment and report;

and every apportionment and report so made or revised, and every such act so done, shall have the same force and effect as if the same had been made, revised or done by the Commissioners.

34. Whenever any apportionment and report have been made in pursuance of the provisions hereinbefore contained, the Commissioners shall cause such report to be published by affixing in every village in which any lands mentioned therein are situate a copy of so much thereof as relates to such lands, and also a like copy at the office of the Collector and of the Sub-divisional Officer, and at every *Munsif's* Court within whose jurisdiction, and at every police *thana* within the limits of which, such village, or any part thereof, is situate.

Report to be published.

The fact of such apportionment and report having been made, and such copies having been affixed, shall also be notified by beat of drum in every such village.

35. Any person who may deem himself to be aggrieved by any such apportionment may, within one month after such report has been published, prefer an objection before the Commissioners, and the Commissioners shall be bound to inquire into and decide upon such objection;

Appeal against apportionment.

and any person who is dissatisfied with such decision may, within one month from the date of such decision, appeal to the Commissioner of the Division against such apportionment;

and such Commissioner shall cause notice of the day fixed for the hearing of such appeal to be published by affixing the same in the office of the Collector and of the Sub-divisional Officer and in a conspicuous

(Secs. 36-36A.)

place in every village, and in the Court of every *Munsif* within whose jurisdiction, and at every police-*thana* within the limits of which, any of the lands mentioned in such report are situate.

Such Commissioner shall hear such appeal and the objections thereto of all persons interested, and may confirm such apportionment, or may revise and alter the same as to him shall seem fit, or may return the same to the Commissioners for further consideration and revision :

Provided that the total sum apportioned by every apportionment and report so revised and altered, as payable in respect of all the lands improved or reclaimed by the works shall not be less than the total cost of the construction of such works within the meaning of section 25.

Every such apportionment and report, when revised or altered, shall, so far as the same has been altered, be published, and be liable to appeal, in like manner as the original apportionment and report.

The decision of the Commissioner of the Division upon any appeal under this section shall be final.

Final determination of apportionment.

36. Whenever the Commissioner of the Division shall confirm any apportionment and report, or whenever one month shall have elapsed from the publication of any report without any appeal therefrom having been preferred,

he shall pass an order declaring the sums payable in respect of the lands respectively and the persons liable to pay the same to be determined, and shall cause such order to be published in such manner as to him shall seem fit.

Power to add to, or alter declaration as to names of persons liable to pay.

[¹]**36A.** (1) If any order passed under section 36, so far as it declares what persons are liable to pay any sum under this Act in respect of any land, appears at any time to require revision—

(a) by reason of the omission of the name of any co-sharer of such land, or

(b) by reason of any change having taken place in the ownership or joint ownership of such land, or

(c) for any other substantial reason,

the Collector may, on the application of any holder of the land or of his own motion, and after such inquiry and upon such conditions (if any) as he may think proper, add to or alter such order :

Provided that every person whose name is so added or who is materially affected by any such alteration has had an opportunity of being heard by the Collector.

[¹] Section 36A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 6, in Vol. III of this Code.

(Sec. 37.)

(2) Any person who is dissatisfied with any addition or alteration made under sub-section (1) may, within one month after the same was made, appeal to the Commissioner of the Division.

(3) The Commissioner shall cause notice of the day fixed for the hearing of such appeal to be published in the manner prescribed by section 35; and shall, on the day so fixed, hear such appeal and all objections thereto advanced by persons interested and may confirm or revise the addition or alteration, or may remit the case to the Collector for further consideration and revision.

(4) The decision of the Commissioner on any such appeal shall be final.

(5) Every addition and alteration made under this section shall be published, in such manner as to the Collector may seem fit, after the expiration of one month—

- (i) from the time when the addition or alteration was made, or
- (ii) if any appeal has been preferred under sub-section (2), from the decision of the appeal;

and the addition or alteration shall take effect from the date of such publication; and proceedings may thereupon be taken under this Act, in respect of such addition or alteration, as if a new order embodying it had been made under section 36.

PART IV.

RECOVERY OF SUMS DUE TO THE COLLECTOR.

37. As soon as any apportionment has been determined as aforesaid, the Collector may cause a notice in the form in Schedule B hereto annexed to be served upon any landholder who has not paid the sum payable by him.

Such notice shall require such landholder, within one month from the date of^[1] [the service thereof] upon him, to pay such sum, with interest^[2] [up to the day of payment,] or to enter into an engagement for the payment, by instalments extending over a period of not more than ten years, of such sum, together with interest * * *^[3] on all instalments remaining unpaid at the date of such payment.

[¹] The words "the service thereof," in s. 37, were substituted for the words "its service" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 7 (1), in Vol. III of this Code.

[²] The words "up to the day of payment," in s. 37, were substituted for the words "at the rate of five per centum per annum" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 7 (1), in Vol. III of this Code.

[³] The words "at the said rate," in s. 37, were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 7 (2), and are omitted.

(Secs. 38-41.)

If amount not discharged, the Collector may recover it as a public demand.

38. If any landholder fails to discharge the sum made payable in respect of his improved lands or in respect of his reclaimed lands, or fails to enter into an engagement for the payment thereof as in this Act hereafter provided, or, having entered into such an engagement, fails to discharge any instalment payable thereunder, such sum or such instalment, together with interest * * *,^[1] shall be recoverable under the provisions of any law^[2] for the time being in force for the recovery of public demands.

Collector may also with sanction of Board of Revenue raise unpaid amount by leasing or mortgaging the improved or reclaimed lands.

39. If the Collector thinks it inexpedient to proceed under the provisions of section 38, or, having so proceeded shall have failed to realize the sum due, he may, with the sanction of the Board of Revenue,^[3] raise the amount necessary to discharge the sum or instalment remaining unpaid—

- (a) by letting in perpetuity or for a term, on payment of a premium equivalent to such amount, the whole or any part of such improved lands or reclaimed lands;
- (b) by mortgaging the whole or any part of such improved lands or reclaimed lands;
- (c) by letting in farm or managing by himself or another the whole or any part of such improved lands or reclaimed lands; or
- (d) partly by one of such modes and partly by another or others of them.

For the purposes of this section, the Collector may exercise all the powers of the owner of such improved or reclaimed lands; and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

Recovery of unrealised portion of charge.

40. In case the Collector certifies that any sum payable as hereinbefore provided cannot be realized as provided by section 38 or 39, so much of such sum as shall not have been so realized shall be a charge upon any profits that may accrue from the property vested in the Collector under the provisions of section 47.

Power to repay advances.

41. Any landholder who has entered into an engagement for the repayment of any sum apportioned as aforesaid may at any time repay to the Collector the entire amount of the principal sum which shall be then remaining due, and interest thereupon up to the day of payment;

^[1] The words "thereupon at five *per centum per annum*," in s. 38, were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

^[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 41A-42.)

and thenceforth the said engagement shall be terminated, and all liabilities in respect thereof for principal or interest shall determine.

[¹]PART IV-A.

RECOVERY OF SHARE OF PAYMENTS FROM CO-SHARERS.

[²]41A. When any landholder has made any payment under the foregoing provisions of this Act in respect of land which he holds jointly with other persons, and such payment exceeds the amount which is proportionate to his individual interest in the land, he may—

Power to
recover share
of payments
from
co-sharers.

(a) recover from his co-sharers, respectively, such contributions towards such payment as are proportionate to their individual interests in the land, either—

(i) in the same manner in which arrears of rent are recoverable under the Bengal Tenancy Act, 1885,[³] and under similar penalties, or,

(ii) if such co-sharers have been declared by any order passed under section 36 or revised under section 36 A to be liable to pay—upon application to the Collector as hereinafter provided; or

(b) take credit for such contributions as aforesaid in any adjustment of accounts between himself and his co-sharers.

8 of 1885.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COST OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

42. Every landholder who has been charged with any sum by a report published as aforesaid may, after he has paid or engaged to pay the same,—

Proprietor
may recover
from
subordinate
tenants.

(a) proceed under any law for the time being in force to enhance the rents of any person holding immediately from him any land the productive powers of which have been increased by any works carried out

[¹] Part IV-A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 8, in Vol. III of this Code.

[²] As to the application of s. 41A for the recovery of money paid for the maintenance of works, see s. 48 (1), *post*, p. 357.

[³] Printed in Vol. I of this Code.

(Secs. 43-44.)

under this Act: provided that any such person may at his option elect to pay under clause (b) of this section; or

(b) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest * * *^[1] from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable, and which have been benefited by any scheme or works carried out under this Act.

(c) The sum recoverable by such landholder from each such person under clause (b) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

Recovery by
superior
tenant.

43. Any superior tenant, who has made any payment to a landholder under the provisions of clause (b) of section 42, may—

(a) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act: provided that any such person may at his option elect to pay under clause (b) of this section; or

(b) recover the sum or part of the sum which has been so paid by him according to the proportions and subject to the rules laid down in clause (c) of section 42, with interest * * *^[1] from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made, and which have been benefited by any scheme or works carried out under this Act.

Mode and
time of pay-
ment.

44. (1) The sum payable to a landholder or superior tenant in any one year under clause (b) of section 42 or under clause (b) of section 43 shall be payable by equal instalments upon the days appointed for the

^[1] The words "at the rate of five *per centum per annum*," in s. 42 (b), were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

(Sec. 44A.)

payment to such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

(2) If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such person shall pay, such landholder or superior tenant may serve such person, through the Collector, with a notice setting forth the amount which he claims, and requiring such person, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

Provision in case of dispute as to the amount to be paid.

(3) If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable, with interest * * *.[¹]

Collector to decide objections:

If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final.

The Collector may direct that any sum of money payable under his decision, together with any cost[²] awarded by him, be paid by instalments extending over a period of not more than ten years.

The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

[³]44A. (1) If any landholder or superior tenant has made any payment under the foregoing provisions of this Act in respect of lands which are or were held by tenants immediately from him, and which have been benefited by any scheme or works carried out under this Act,

Recovery, under the certificate procedure of payment made in respect of lands held by tenants.

and if he has not enhanced the rent of such tenants under section 42, clause (a), or section 43, clause (a), or recovered under section 42, clause (b), section 43, clause (b), or section 44 the sums due to him,

he may, upon application to the Collector as hereinafter provided, but subject to the provisions of sub-section (1) of section 44 as to instalments, recover from such tenants, such sums as he may be entitled to according to the proportion and under the rules laid down in clause (c) of section 42, with interest from the date of such payment.

(2) An application in respect of a payment may be made under this section by a landholder who was declared by an order passed under section 36 to be liable to make such payment, although his name has been

[¹] The words "at five per centum per annum," in s. 44 (3), were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, and are omitted.

[²] *Sic.* Read costs.

[³] Section 44A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 9, in Vol. III of this Code.

As to the application of s. 44A for the recovery of money paid for the maintenance of works, see s. 48 (1), *post*, p. 357.

(Secs. 44B-47.)

removed, by an order made under section 36A from the list of persons declared liable to make payments.

(3) If any tenants referred to in sub-section (1) have transferred their tenancies, the sums referred to in that sub-section may be recovered thereunder—

(a) from the said tenants for the period during which they occupied the benefited land since the carrying out of the said scheme or works, or

(b) from the tenants in possession.

Bar to recovery of money from tenants in certain cases.

[¹]44B. Notwithstanding anything hereinbefore contained, no sum shall be recoverable under section 42, clause (b), section 43, clause (b), section 44 or section 44A, in respect of any lands which have been benefited by any scheme or works carried out under this Act, when, in consequence of such scheme or works—

(a) the rent of such lands has been increased, or

(b) rent has for the first time been imposed on such lands.

Proviso.

45. No person from whom any sum has been recovered under clause (b) of section 42 or under clause (b) of section 43 [²] [or under section 44A] shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

PART VI.

MISCELLANEOUS.

Drainage works to be subject to the laws relating to embankments.

46. All outlets and water-channels, natural or artificial, which shall be altered, enlarged, excavated or cut under the provisions of this Act, and the construction and maintenance of embankments and of dams and works therein or connected therewith, shall, save as hereinafter provided, be subject to the law [³] for the time being in force regulating the construction and maintenance of public embankments and public rivers, channels and outlets.

Lands and works to be vested in Collector on behalf of Secretary of State.

47. All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all works constructed under the provisions of this Act, as well as all outlets,

[¹] Section 44B was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 9, in Vol. III of this Code.

[²] These words and figures in square brackets in s. 45 were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 10, in Vol. III of this Code.

[³] Section 91 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), *post*, p. 457, declares that nothing in that Act shall apply to any embankment, land or water-course which is under the operation of the present Act.

(Sec. 48.)

water-channels, embankments and dams so constructed, altered, enlarged, excavated or cut shall be vested in the Collector of the district for the time being, on behalf of the Secretary of State for India, in order to effectuate and maintain the objects of this Act;

and, to assist the Collector in the management of the same, the Lieutenant-Governor may appoint, or authorize the election by the landholders aforesaid of, a Committee consisting of not less than four or more than six persons, being themselves holders of the lands reclaimed or improved.

48. (1) The expense of keeping in efficient order and repair any improvements or works effected under this Act shall be charged to the profits from the property vested in the Collector under section 47; Cost of maintenance of works.

and, if such profits shall not suffice, the balance shall be paid to the Collector in the proportions of the original contribution by the holders for the time being of the land^[1] which have been benefited by such works;

and all sums payable to the Collector under the provisions of this section shall be recoverable in the manner provided by section 38, or in the manner provided by section 39;

and every proprietor or other person who has paid any such sum may recover the same, or any part of the same, in the proportion and subject to the rules laid down in section 42 or 43 as the case may be,^[2] [and for that purpose the procedure prescribed by section 41A or section 44A and sections 51B and 51C shall be applicable].

(2) Any such amount as is specified in section 25 which, from oversight or other cause, has been omitted from the apportionment and report made under section 32 or section 33, may be charged and recovered under the provisions of clause (1) of this section. Recovery of items omitted from apportionment.

(3) If, on the first day of January next before the last instalments payable under the provisions of section 36 are due, there is, after providing for the expense of keeping in efficient order and repair the improvements and works executed under this Act, a surplus of the profits from the property vested in the Collector under section 47, Surplus profits from property vested in Collector under section 47

such surplus, or as much thereof as will suffice, shall be appropriated to the liquidation of the said last instalments. to be appropriated to payment of debt to Government.

Any landholder who has paid any such instalment in advance under the provisions of section 41 shall be entitled to a refund in proportion with interest at^[3] [four] *per centum per annum*.

[¹] *Sic. Read lands.*

[²] These words and figures in square brackets, in s. 48 (1), were added by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 11 (1) in Vol. III of this Code.

[³] The word "four," in s. 48 (3), was substituted for the word "five" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 11 (2) in Vol. III of this Code.

(Secs. 49-51A.)

Cost of maintenance may be capitalized, and the capitalized amount levied.

(4) The Lieutenant-Governor may at any time, in his discretion, direct that the total average annual expense, which over and above such profits as aforesaid is necessary to keep such improvements and works in efficient order and repair, be estimated, and that there be levied from such landholders, in lieu of all future contributions to the maintenance of such improvements and works such amount as, being invested in Government securities at the current rate of interest, shall yield a sum equal to such average annual expense. The provisions of sections 31, 38 and 39 shall apply to such capitalized amount.

Powers for taking evidence.

49. The Commissioners, the Commissioner of the Division, and every officer appointed by the Lieutenant-Governor under section 33, shall have the powers conferred on Civil Courts by the Code of Civil Procedure^[1] for compelling the attendance of witnesses and the production of evidence, and for examining witnesses in any inquiry or appeal which they or he may be empowered to make or entertain under the provisions of this Act.

10 of 1877

Rent-free lands may be deemed subordinate tenures.

50. Any land held free of rent or revenue, being less than one hundred standard *bighas* in extent, and not being a property entered on the Collector's general register of revenue-free lands, may, for the purposes of this Act, be deemed to form a tenure or under-tenure held immediately from some landholder; and the Commissioners shall determine who shall be deemed to be the landholder in respect of such tenure:

Provided that any holder of such land, who may deposit the cost of survey of his land at a rate to be approved by the Commissioners and calculated on the area claimed by him, shall be entitled to be deemed a landholder, in respect of such lands, within the meaning of this Act.

Sum payable by holder of rent-free land to be payable in two instalments.

51. Wherever any land, as mentioned in the last preceding section, shall be deemed to form a tenure or under-tenure held immediately from a landholder as therein provided, every sum payable to the landholder in respect of such land in any one year shall be payable in two equal instalments on such dates as the Commissioner of the Division may fix.

Such Commissioner shall cause due notice to be given in the villages concerned of the dates so fixed by him.

Recovery under the certificate

[²]51A. Any person who has been determined under section 50 to be the landholder in respect of land, held free of rent or revenue, which has:

[¹] Act 10 of 1877 was repealed by Act 14 of 1882 which has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

[²] Sections 51A and 51B were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, in Vol. III of this Code.

As to refunding or crediting to tenants reductions to be made in past charges in respect of those schemes, see ss. 17 to 19 of the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), in Vol. III of this Code.

As to the application of s. 51B for the recovery of money paid for the maintenance of works, see s. 48 (1), *ante*, p. 357.

(Sec. 51B.)

benefited by any scheme or works carried out under this Act, and who has made any payment under the foregoing provisions of this Act in respect of such land, may, upon application to the Collector as hereinafter provided, but subject to the provisions of section 51, recover the amount of such payment from any person holding such land immediately below him.

[¹] 51B. (1) Every application to the Collector under section 41A for the recovery of contributions from co-sharers towards a payment made by a landholder under the foregoing provisions of this Act must—

Further provisions as to applications under sections 41A, 44A or 51A.

- (a) be made within six months after such payment was made, and
- (b) specify the amount of such payment, and the amount of such contributions due from each co-sharer.

(2) Every application to the Collector under section 44A or section 51A for the recovery of sums due, from tenants of, or persons holding lands benefited by any scheme or works carried out under this Act, on account of any payment made by the applicant under the foregoing provisions of this Act must—

- (c) be made within six months after such sums became due,
- (d) specify the amount of such payment, and the date on which it was made,
- (e) specify the amount of such sums due from each tenant or person holding land, and the date on which it became due, and
- (f) be accompanied by a declaration, signed by the applicant and stating—
 - (i) that he has not, on account of the said scheme or works, enhanced the rent, if any, payable in respect of the said lands or any of them, and
 - (ii) that he has not taken from such tenants or persons holding land, or any of them, any premium on account of such scheme or works.

(3) Every application under section 41A, section 44A or section 51A must—

- (g) be signed and verified in the manner provided by sections 51 and 52 of the Code of Civil Procedure^[2] for the signature and verification of plaintiffs,

[¹] See footnote [¹] on s. 51A, p. 358, *ante*.

[²] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 14 and 15 in Order VI in Sch. I to the latter Code—see s. 158 thereof, in General Acts, 1904-08, Ed. 1909, p. 184.

(Sec. 51C.)

- (h) be accompanied by a court-fee of eight annas, and
 (j) request the Collector to make a certificate authorizing the recovery of the said contributions or sums, as the case may be, under the Public Demands Recovery Act, 1895.^[1] Ben. Act 1895.

(4) Every declaration made under clause (f) shall, for the purposes of section 199^[2] of the Indian Penal Code, be deemed to be a declaration which the Collector is authorized by law to receive as evidence. 45 of 1860.

(5) If the Collector at any time has reason to believe that any declaration accompanying an application as aforesaid, or any part thereof, is false, he may reject the application and leave the applicant to pursue his claim in a Civil Court.

Grant of certificate, and effect thereof.

^[3]51C. (1) Upon receiving any such application, the Collector may, if he thinks fit, make a certificate as aforesaid.

(2) Every such certificate shall have the same effect as a certificate made under section 7 of the said Public Demands Recovery Act, 1895;^[1] and the same notices shall be issued, and the same proceedings may be taken, with respect thereto, by the Certificate Officer, as in the case of a certificate made under that section. Ben. Act 1 of 1895.

(3) The person in whose favour any such certificate is made shall be deemed to be the decree-holder for the amount mentioned in the certificate, and the person against whom the certificate is made shall be deemed to be the judgment-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost, and on his responsibility, and not otherwise.

(4) If any person against whom any such certificate is made objects that the contributions or sums claimed by the person who applied for the certificate, are not legally due, or exceed the sums which the applicant could recover from him in a Civil Court as being payable in respect of his individual interest in the land, and if the Certificate Officer considers there is probable ground for such objection, the Certificate Officer may modify the certificate or, if he thinks fit, cancel the certificate and leave the applicant to pursue his claim in a Civil Court.

^[1] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the corresponding portion of the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

^[2] Printed in the General Acts, 1834-67, Ed. 1909, p. 298.

^[3] Section 51C was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, in Vol. III of this Code.

As to the application of the section for the recovery of money paid for the maintenance of works, see s. 48 (1), *ante*, p. 357.

(Secs. 51D.-51H.)

[¹]51D. (1) If, in any area benefited by any scheme or works carried out under this Act, there has occurred in any year a total or serious failure of crops, then, notwithstanding anything hereinbefore contained, the Collector may,

Power of Collector to suspend recovery of dues in cases of failure of crops.

after such inquiry (if any) as he deems necessary, and with the previous sanction of the Commissioner of the Division,

by written order, suspend for the whole or any part of that year, the recovery of all or any sums which are recoverable from landholders and tenants, respectively, in respect of such area under the foregoing provisions of this Act.

(2) Every such order shall be published in the manner prescribed in section 12 for the publication of the notification referred to in that section.

(3) When any such order has been duly published, all proceedings under the Public Demands Recovery Act 1895,^[2] and all suits by landholders or tenants, for the recovery of any sums to which such order relates, shall be stayed during the period specified in the order.

Ben. Act 1 of 1895.

[³]51E. An order duly made and published under section 51D shall not be questioned in any Civil or Revenue Court.

Bar to jurisdiction of Courts in respect of order of suspension.

[³]51F. If any landholder or tenant, during any period specified in an order duly made and published under section 51D, collects any sums payable to him to which such order relates, then all sums payable by him to which such order relates may be recovered from him as if such order had not been made.

Procedure when landholder or tenant collects dues during period of suspension.

[³]51G. When an order has been duly made and published under section 51D, suspending the recovery of any sums for any period, then, if such sums form part of a sum which is, in pursuance of this Act, payable by instalments the period remaining for the payment of such instalments shall be extended by the period, specified in such order, and no more than one instalment of the sum remaining due shall be payable in any succeeding year.

Extension of period for payment of instalments when order of suspension made.

[³]51H. When an order has been duly made and published under section 51D, suspending the recovery of any sums for any period, such

Extension of period of limitation.

[¹] Section 51D was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, in Vol. III of this Code.

[²] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

[³] Sections 51E to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, in Vol. III of this Code.

(Secs. 51J.-55.)

when order
of suspension
made.

period shall be excluded in computing the period of limitation prescribed for a suit or application for the recovery of such sums.

Interest not
to accrue
during period
of suspension.

[¹]51J. When an order has been duly made and published under section 51D, suspending the recovery of any sums for any period, then, notwithstanding anything hereinbefore contained, no interest shall accrue on such sums during such period.

Service of
notices.

52. All notices under this Act required to be served, may be served by delivering the same to the person to be served or by posting the same upon the door of his dwelling-house, or, if such person cannot be found and his dwelling-house is not known, then by posting the same on some conspicuous part of the land to which such notice relates, and copies thereof at the *Munsif's* Court within whose jurisdiction, and the police-*thana* within the limits of which, such land is situate.

Proceedings
not to be
invalidated
by formal
errors.

53. No proceeding under this Act shall be defeated or invalidated by reason of any defect in the number or property of assenting landholders, nor by any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission;

and every order and report of the Commissioners, of the Collector and of any officer appointed by the Lieutenant-Governor under section 33 shall be conclusive evidence that all notifications and notices hereby required as preliminary thereto had been duly published and served, and that all other preliminaries thereunto had been duly performed, and, save as is hereinbefore provided, shall be final and conclusive.

Portion of
scheme may
be deemed
separate
scheme.

54. The Lieutenant-Governor may, by an order in writing, direct that any portion of a scheme adopted and ordered to be executed under this Act shall, for the purposes of this Act or for any such purposes, be deemed to be a separate scheme.

Lieutenant-
Governor
may empower
other person
to act for
Collector.

55. The Lieutenant-Governor may specially empower^[3] any person to do all or any acts, to discharge all or any functions and to exercise all or any powers which may be done, discharged or exercised by a Collector under this Act;

and, on any person being so specially empowered, such person may do all or any of such acts, discharge all or any of such functions, and exercise all or any of such powers, and such person shall be deemed to be the Collector for the purposes of the scheme in respect of which he is so especially empowered.

[¹] Sections 51E to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902^{*} (Ben. Act 1 of 1902), s. 12, in Vol. III of this Code.

[²] For an order made under s. 55, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 56-59.)

56. The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy, Assistant or Sub-Deputy Collector, or to any similar officer, the performance of any acts and the discharge of any functions which the said Collector may perform or discharge under this Act; Collector may delegate authority.

and upon such delegation such Deputy Collector or other officer may do any such acts and discharge any such functions, and may exercise any powers for the performance of the same which the Collector may exercise under this Act:

Provided that all acts done, functions discharged and powers exercised by such officer shall be done, discharged or exercised subject to the control and supervision of the Collector.

57. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division. Control of Commissioner.

58. The Lieutenant-Governor may, from time to time, make rules^[1] to regulate the following matters:— Power to make, alter and cancel rules.

(a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(b) the person by whom,^[2] the time, place or manner at or in which anything for the doing of which provision is made in this Act shall be done;

(c) and generally to carry out the provisions in this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Such rules, alterations and cancelment shall be published in the Calcutta Gazette, and shall thereupon have the force of law. Publication of rules.

PART VII.

SPECIAL PROVISIONS FOR WORKS CARRIED OUT UNDER BENGAL ACT 5 OF 1871.^[3]

59. The following portions of this Act shall apply to any scheme or works carried out under the provisions of Bengal Act 5 of 1871,^[3] that is to say:— Portions of this Act applicable to works carried out under Bengal Act 5 of 1871.

(a) as to the method of realizing sums due on account of the cost of the works—sections 31, 38, 39 and 40;

^[1] For rules made under s. 58, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] *Sic.* Read and the time.

^[3] Ben. Act 5 of 1871 was repealed by this Act—see s. 2, *ante*, p. 337.

(Secs. 60-63.)

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SCHEDULE A (referred to in section 12):

BENGAL DRAINAGE ACT, 1880.

To all whom it may concern.

Take notice that it is proposed to drain and improve certain lands in the village of , *pargana* . Plans and provisional estimates of the works proposed are now lodged in and may be inspected by any person interested on any of the days and at any of the times specified below till the day of next. (*Here specify the days and hours at which the plans and the estimates will be open to inspection.*)

All proprietors of estates paying revenue direct to Government of which any lands may be affected by the proposed drainage and improvement,

all owners of revenue-free lands borne on the Collector's general register of revenue-free lands, which may be so affected,

all persons having permanent rent-paying interests in tenures, under-tenures, or lands extending to not less than one hundred standard *bighas* to be so affected,

and all persons having permanent rent-free interests in tenures, under tenures and lands to be so affected,

are hereby called upon to inspect the said plans and estimates.

Those who wish the works to be carried out and are willing to bear their proportion of the cost thereof are requested to send to the Drainage Commissioners their assent in writing, signifying therein, so far as possible, the nature and extent of their interest in such land, on or before the day of 18

(Schedule B.)

Those who have any objection to the execution of the said works are required to send in their objection in writing to the said Commissioners on or before the said day.

All persons who are hereby called upon to give their assent or express their objections in writing are warned that under the law the Commissioners are not bound to recognize any such assent or objection unless the person making the same specifies the extent and portion of the land which he holds and the tenure or interest which he has in the same.

*Collector, for the Drainage
Commissioners..*

SCHEDULE B (*referred to in section 37*).

BENGAL DRAINAGE ACT, 1880.

To

Take notice that the Drainage Commissioners have apportioned against you the sum of _____ as your contribution in respect of the lands of _____, and that you are hereby required, within one month from the date of the service of this notice, to pay to me the said sum of Rs. _____, together with interest at the rate of [1] [four] *per centum per annum* from the _____ day of _____, or to enter into an engagement for the payment of the same by instalments extending over a period of not more than ten years[2] [together with simple interest, at the rate of four *per centum per annum*, on all instalments remaining unpaid at the date of each such payment].

[1] The word "four" in Schedule B was substituted for the word "five" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 13 (1), in Vol. III of the Code.

[2] These words in square brackets in Schedule B were added by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 13 (2), in Vol. III of this Code.

BENGAL ACT 9 OF 1880.

(THE CESS ACT, 1880.)

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BENGAL ACT 9 OF 1880.

(THE CESS ACT, 1880).^[1]

(13th October, 1880.)

An Act to amend and consolidate the Law relating to Rating for the Construction, Charges and Maintenance of District Communications and other Works of Public Utility, and of Provincial Public Works.

Whereas it is expedient to amend and consolidate the law relating Preamble.
to rating for the construction, charges and maintenance of district roads
and other means of communication, and of provincial public works, with-
in the territories administered by the Lieutenant-Governor of Bengal,^[2]
and to the levy of a road cess and a public works cess on immovable
property situate therein, and to the constitution of local committees for
the management of the proceeds of the said road cess, and also to provide
for the construction and maintenance of other works of public utility
out of the proceeds of the said road cess; It is hereby enacted as
follows:—

PRELIMINARY.

1. This Act may be called the Cess Act, 1880;
(Commencement). *Rep. by the Amending Act, 1903 (1 of 1903.)*

Short title.

^[1] LEGISLATIVE PAPERS.—For Proceedings in Council, *see* Calcutta Gazette, 1879, Supplement, p. 1508; *ibid*, 1880, Supplement, pp. 45, 291, 323, 379, 406 and 948.

LOCAL REPEALS AND AMENDMENTS.—Section 2 of the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885, printed, *post*, p. 908), repeals and amends a number of sections (indicated *post*) of the present Act, in all districts in Bihar and Orissa (as now constituted) except the district of Singhbhum and the Sonthal Parganas.

ANNOTATED REPRINT.—For an annotated reprint of this Act, with rules and orders issued by the Bengal Board of Revenue under, or with reference to, the Act, *see* the Bengal Cess Manual, 1911.

AMALGAMATION OF CESSES.—The rate imposed under the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), is collected with the Road Cess imposed under the present Act—*see* ss. 21 and 22 of the Act of 1895, in Vol. III of this Code.

LOCAL EXTENT.—This Act was passed for the former province of Bengal (*see* the preamble) and took effect in several districts and parts of Districts from its commencement, and the Lieutenant-Governor in Council is empowered to extend it to any other district or part of a district in the Province (*see* section 2). But the Act does not affect immoveable property (*in Calcutta or*) in certain Provincial Municipalities (*see ibid*), and the Lieutenant-Governor is empowered to exempt any district or part of a district, or any estate or tenure, from the operation of the Act, or from the operation of so much of the Act as relates to the road-cess or the public works cess (*see ibid*).

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3 (2), to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum in the District of Singhbhum, in Chota Nagpur Division—*see* Vol. IV, Pt. III.

The Act is in force in certain notified tracts in the Sonthal Parganas—*see* Vol. IV, Pt. VI; but its operation is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the unnotified tracts in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, *ibid*.

^[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

(Secs. 2-3.)

Extent.

2. This Act shall take effect at once in every district^[1] and part of a district in which Bengal Act 10 of 1871^[2] (*an Act to provide for local rating for the construction and maintenance of roads and other means of communication*) and Bengal Act 2 of 1877^[2] (*an Act to provide for the levy of a cess for the construction, charges and maintenance of provincial public works*) may be in force on the date of the commencement of this Act.

The Lieutenant-Governor may, by notification, in the Calcutta Gazette, extend its provisions to any other district or part of a district^[3] situate in the territories for the time being administered by him; and this Act shall take effect accordingly therein from the date specified in such notification:

Proviso.

Provided that nothing herein contained shall be deemed to affect any immovable property within the limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, or within the limits of any first or second class municipality under the Bengal Municipal Act, 1876.^[4]

Ben. Act 5 of 1876.

Power to exempt districts from operation of Act.

The Lieutenant-Governor may, by notification^[5] in the Calcutta Gazette, exempt any district or part of a district, or any estate or tenure, from the operation of this Act, or from the operation of so much thereof as relates to the road cess, or as relates to the public works cess, and may at any time, by a similar notification, revoke such exemption.

Repeal of District Road Cess Act, 1871, and Provincial Public Works Act, 1877.

3. The said Bengal Act 10 of 1871 and the said Bengal Act 2 of 1877 are hereby repealed; but this repeal shall not affect the past operation of such Acts or anything duly done or suffered, or any right, privilege, obligation or liability acquired, accrued or incurred thereunder; and all rules, orders, appointments and valuations in force at the commencement of this Act which were made under the said Acts shall,

[¹] These districts are :-

BHAGALPORE DIVISION—

Bhagalpur (Malda), Monghyr and Purnea.

CHOTA NAGPUR DIVISION—

Hazaribagh, Manbhum, Palamau and Ranchi.

ORISSA DIVISION—

Balasore, Cuttack and Puri.

PATNA DIVISION—

Gaya, Patna and Shahabad.

(NOW TIHUT DIVISION)—

Champaran, Darbhanga, Mozafferpur and Saran.

[²] Ben. Acts 10 of 1871 and 2 of 1877 have been repealed by s. 3 of the present Act.

[³] This Act has been extended under s. 2, para. 2, to Pargana Dhalbhum, in the district of Singhbhum (*see* Calcutta Gazette, 1883, Pt. I, p. 809), and to the Porahat Estate, in the same district (*see* *ibid*, p. 98). It had previously been declared to be in force in Pargana Dhalbhum by notification under the Scheduled Districts Act, 1874 (14 of 1874), *see* Notes on the Local Extent at the beginning.

[⁴] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), and this reference should now be taken to be made to that Act—*see* s. 2 thereof, *post*, p. 502.

[⁵] For a list of notifications issued under this paragraph of s. 3, *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 4.)

so far as they are consistent with this Act, be deemed to have been made under this Act;

and all cesses which were imposed under the said Acts shall be deemed to have been imposed under this Act, and every sum due to the Collector in respect of arrears of cess, of expenses incurred, of fees or costs payable, of notices served or of fines imposed under either of the said Acts shall be deemed to be due on such accounts under this Act;

and all cesses so imposed and every sum so due may be levied as herein provided.

4. In this Act, unless there be something repugnant in the subject or context,— Interpretation clause.

“annual value of any land, estate or tenure” means the total * “[¹] rent which is payable, or, if no * “[¹] rent is actually payable, would, on a reasonable assessment, be payable, during the year by all the cultivating *raiyats* of such land, estate or tenure, or by other persons in the actual use and occupation thereof: * “Annual value of land,” etc. :

[²] *Explanation*.—For the purposes of the foregoing definition, whatever is lawfully payable or deliverable, or would, on a reasonable assessment, be lawfully payable or deliverable, in money or in kind, directly to the Government,—

(a) by *raiyats* cultivating land in a Government estate—on account of the use or occupation of the land, or

(b) by other persons in the actual use and occupation of land in such an estate, shall be deemed to be “rent” :

“Commissioner” means the Commissioner of the Division :

“cultivating *raiyat*” means a person cultivating land and paying rent therefor not exceeding one hundred rupees *per annum* : “Commissioner”:
“Cultivating *raiyat*”:

Explanation.—When rent is payable in kind, the money value thereof shall, for the purposes of this Act, be taken to be the annual value of the landlord’s share of the crop calculated on an average of the three years next preceding any valuation or re-valuation under this Act :

“district” means the local area to which a Collector is appointed, “District” : and no lands situate beyond the limits of such local area shall be deemed to form part of a district by reason of their forming part of an estate paying revenue to the Collector thereof :

[³] “estate” means—

“Estate” :

(1) land included under one entry in the general registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the

[¹] The words “revenue or” were repealed by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 2 (1), and are omitted.

[²] This *Explanation* was added by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 2 (2), in Vol. III of this Code.

[³] For power to direct that certain land shall be deemed to be a “tenure” and not an “estate,” see s. 40A, *post*, p. 391.

(Sec. 4.)

Land Registration Act, 1876,^[1] or any similar law for the time being in force; Ben. Act 7 of 1876.

(2) any land, other than the holding of a cultivating *raiyat*, the revenue or rent of which may be payable directly to the Collector or any person specially appointed by him to collect the same;

(3) any land acquired under any rules issued by, or under authority of, Government for the sale, grant, lease or clearance of waste-lands:

“Holder of an estate or tenure”: “holder of an estate or tenure” means all or any of the holders thereof, and, where two or more persons are jointly holders thereof, they shall be jointly and severally liable under this Act:

“Holding”: “holding” means the land held by a cultivating *raiyat*:

“Immovable property”: “immovable property” includes lands and all benefits to arise out of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings:

“Land”: “land” means land which is cultivated, uncultivated or covered with water, and does not include houses or buildings:

“Part,” “Chapter” and “section”: “Part,” “Chapter” and “section” mean respectively a Part, Chapter and section of this Act:

“Schedule”: “Schedule” means a schedule to this Act annexed, and every such schedule shall be read as part of this Act:

“Tenure”: [2] “tenure” includes every interest in land, whether rent-paying or not save and except an estate as above defined, and save and except the interest of a cultivating *raiyat*:

“The Collector”: “the Collector” includes any person specially invested with the powers of a Collector for the purposes of this Act, and means—

i—when used in reference to revenue-paying estates and lands comprised therein, to all proceedings connected therewith and to the assessment and levy of cesses in respect thereof, the Collector or other similar officer on whose revenue-roll such estates are borne;

ii—when used in reference to revenue-free estates and lands comprised therein, to all proceedings connected therewith and to the assessment and levy of cesses in respect thereof, the Collector or other similar officer on whose general register of revenue-free lands such estates are borne:

[1] Printed, *ante*, p. 235.

[2] For power to direct that certain land shall be deemed to be a “tenure” and not an “estate,” see s. 40A, *post*, p. 391.

(Secs. 5-6.)

“ the Collector of the district ” includes any person specially invested with the powers of a Collector for the purposes of this Act, and means the officer in charge of the revenue-administration of a district : “ The Collector of the district ” :

[¹] “ the Settlement Officer ” means the Revenue-officer appointed by the Local Government, under the designation of Settlement Officer or Assistant Settlement Officer, for the purpose of preparing or revising records-of-rights, under Chapter X [²] of the Bengal Tenancy Act, 1885, or any other law for the time being in force, in respect of the lands in any local area, estate or tenure, or part thereof, “ The Settlement Officer ” :

and includes any officer appointed by the Local Government to maintain records-of-rights so prepared or revised.

Ben. Act. 3
of 1885.

[³] “ District Board ” means the Board constituted under the provisions of the Bengal Local Self-Government Act of 1885. [⁴] “ District Board ” :

Ben. Act 3 of
1885.

[³] “ District Fund ” means the fund formed under section 52 [⁴] of the Bengal Local Self-Government Act of 1885. “ District Fund ” :

“ year ” means the cess year as determined by the Lieutenant-Governor under section 11. “ Year ”

PART I.

CHAPTER I.

IMPOSITION AND APPLICATION OF THE CESSES.

5. From and after the commencement of this Act in any district or part of a district, all immovable property situate therein, except as otherwise in sections 2 and 8 provided, shall be liable to the payment of a road cess and a public works cess. All immovable property to be liable to a road cess and public works cess.

6. The road cess and the public works cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways and other immovable property ascertained respectively as in this Act prescribed; Cesses how to be assessed.

and the rates at which such cesses respectively shall be levied for each year shall be determined for such year in the manner in this Act prescribed :

[¹] This definition of “ the Settlement Officer ” was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 2 (3), in Vol. III of this Code.

[²] Printed in Vol. I of this Code.

[³] These definitions of “ District Board ” and “ District Fund ” were substituted for the definition of “ the Committee ” by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, and apply to all areas in Bihar and Orissa in which the present Act is in force.

[⁴] Printed, *post*, p. 649.

(Secs. 7-11.)

Provided that the rate at which each such cess shall be levied for any one year shall not exceed the rate of one-half anna on each rupee of such annual value and annual net profits respectively.

Public revenues not liable for more road cess than has been paid to Collector by persons liable. Government and guaranteed railways not liable to the cesses without consent of Governor General in Council.

7. Nothing in this Act contained shall be deemed to require the payment by the Lieutenant-Governor of Bengal,[¹] from the public revenues, of any sum as road cess in excess of such sums as may have been paid as such cess to the Collector by persons liable to pay the same.

8. No railway or tramway, the property of the Government of India, and no railway or tramway of which the dividend is guaranteed by Her Majesty's Secretary of State for India in Council, or by the Governor General of India in Council, or by the Lieutenant-Governor of Bengal,[¹] shall be liable to road cess or public works cess under the provisions of this Act without the previous consent of the Governor General of India in Council.

Application of proceeds of road cess.

9. The proceeds of the road cess in each district shall be paid into the District Road Fund of such district, as hereinafter provided.

[²]* * * * *

Application of proceeds of public works cess.

10. The proceeds of the public works cess[³] [and all interest paid thereon] shall be paid into the public treasury, and shall be applied (1) to the payment of such contributions to the District Road Fund as the Lieutenant-Governor may think proper in consideration of the said cess being assessed and collected jointly with the road cess by establishments paid from the District Road Fund; and (2) to the construction charges and maintenance of the provincial public works, and to the payment of interest on capital which may have been expended, or which may hereafter be expended, on such works, in such manner as the Lieutenant-Governor may direct.

Power to fix cess year.

11. The Lieutenant-Governor shall, by an order[⁴] published in the Calcutta Gazette, fix the date from which the cesses leviable under this Act in any district or part of a district shall take effect therein, and may fix and from time to time alter the date from which the cess year shall run in any district or part thereof.

[¹] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[²] The words "and, together with other assets of such Fund, shall be applied to the purposes mentioned in s. 109" were repealed by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, in all areas in which the present Act is in force, and are omitted.

[³] These words in square brackets in s. 10 were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 2, *post*, p. 429.

[⁴] For a list of orders made under s. 11 for Bengal as constituted on the 31st March, 1912, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 12-13.)

PART II.—MODE OF ASSESSMENT.

CHAPTER II.

VALUATION OF LANDS.

12. Upon the commencement of this Act in any district or part of a district, the^[1] *Board of Revenue* may order that a valuation shall be made of such district or part of a district; *Board of Revenue may order valuation,*

and from time to time, after the expiration of the term of five years from the beginning of the year in which the levy of the cesses took effect in accordance with any such valuation, or with any re-valuation as hereafter provided in this section ^{and re-valuation.} ^{tion.} ^{or in Chapter IIA,} or at any time within twelve months previous to the expiration of such term,

the^[3] *Board of Revenue* may, if^[4] they think fit, order that a re-valuation shall be made of any such district or part of a district, and such re-valuation shall take effect from the beginning of such year as the^[3] *Board of Revenue* may direct.

13. Whenever the term of five years shall have expired from the beginning of the year in which the levy of the cesses took effect in any estate or tenure in accordance with any valuation^[5] [or re-valuation] under this Act or Bengal Act 10 of 1871,^[6] the holder of any such estate or tenure may apply to the Collector to re-value his estate or tenure, and for such purpose shall lodge in the office of the Collector returns in the form in Schedule A contained; and thereupon the Collector shall proceed to re-value such estate or tenure, and, if he make any alteration in the valuation of any such tenure, shall give notice of such alteration to the holder of the estate or superior tenure in which such tenure is included, and shall alter the valuation of such estate or superior tenure accordingly: *After five years holder of estate or tenure may apply to Collector for re-valuation.*

Provided that no re-valuation or reduction of the amount of cesses previously payable in respect of any estate or tenure, in consequence of

[¹] These words "Board of Revenue," in s. 12, were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue—see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[²] The words "or in Chapter IIA" in s. 12, were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 3, in Vol. III of this Code.

[³] See footnote [¹] to s. 12, *ante*.

[⁴] This word "they" in s. 12, was substituted for the word "he," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (2), in Vol. III of this Code.

[⁵] These words "or re-valuation," in s. 13, were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 3, *post*, p. 429.

[⁶] Ben. Act 10 of 1871 has been repealed by this Act—see s. 3, *ante*, p. 374.

(Secs. 14-16.)

a re-valuation under this section, shall take effect until the beginning of the year commencing next after such re-valuation, unless the application for re-valuation shall have been made and the necessary returns lodged in the Collector's office within three months after the beginning of a year, in which case such re-valuation and reduction, if any, shall take effect from the commencement of such year.

Proclamation to make return of lands to be issued.

14. Whenever the^[1] Board of Revenue has ordered ^[2] *under section 12* that a valuation or a re-valuation of any district or part of a district shall be made for the purposes of this Act, the Collector of the district shall cause a proclamation to be issued requiring every holder of an estate or tenure which is liable to pay an annual amount of revenue or an annual amount of rent exceeding one hundred rupees and every holder of a revenue-free estate or rent-free tenure the gross annual rental of which exceeds one hundred rupees, severally to lodge at the office of such Collector within one month a return of all lands comprised in his estate or tenure, in the form in Schedule A contained, giving the particulars in such form set forth.

Publication of Proclamation.

The Collector of the district shall cause such proclamation to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the district, and in any other manner which the ^[1]Board of Revenue may from time to time direct.

Re-valuation may be of particular estates or tenures only.

15. At any time at which the ^[1]Board of Revenue might order a re-valuation of a district or part of a district to be made as provided by section 12, ^[3]*they* may, if ^[3]*they* think fit, instead of so ordering, make an order that particular estates or tenures only in such district or part of a district shall be re-valued.

Notice to lodge returns.

16. Whenever any proclamation has been published, as mentioned in section 14, in any district, and whenever the ^[1] Board of Revenue has made an order, under the last preceding section, that a re-valuation of particular estates and tenures only shall be made, the Collector shall cause a notice to be served in respect of every estate and tenure which is to be valued or re-valued and in respect of which no return shall have been lodged in accordance with the requirement of such proclamation,

^[1] These words "Board of Revenue," in s. 14, were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[2] These words "under s. 12," in s. 14, were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 4, in Vol. III of this Code.

^[3] This word "they," in s. 15, was substituted for the word "he," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (2), in Vol. III of this Code.

(Secs. 17-18.)

requiring every holder of such estate or tenure severally to lodge at the office of the Collector the return mentioned in section 14;

and shall also cause a similar notice to be served in respect of every tenure included in any such estate or tenure which may have been named in any return lodged in pursuance of the provisions of this Act, or of Bengal Act 10 of 1871,^[1] either for the purposes of the valuation or re-valuation then contemplated, or for the purposes of any previous valuation or re-valuation, or of which the existence may in any other way have come to his knowledge.

17. The notice mentioned in the last preceding section shall be in the Form No. I in Schedule B contained, or in the Form No. II in the said Schedule contained, as the case may be, and shall require every holder of the estate or tenure severally to lodge the return within the time specified below, namely:—

In the case of Revenue-paying Estates and Rent-paying Tenures.

If the return relate to any estate or tenure which is liable to the payment of annual revenue or of rent not exceeding Rs. 500, or to any share or interest in such estate or tenure.

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein.

Within three months of the service of the notice.

In the case of Revenue-free Estates and Rent-free Tenures.

If the return relate to an estate or tenure of which the gross annual rental does not exceed Rs. 500, or to any share or interest in such estate or tenure.

Within six weeks of the service of the notice.

If the return relate to any other estate or tenure, or to any share or interest therein.

Within three months of the service of the notice.

The Collector may in his discretion extend the time allowed for lodging any such return.

18. All holders of estates or tenures in respect of which such notice has been served who shall, without sufficient cause being shown to the satisfaction of the Collector, refuse or omit to lodge the required return in the office of such Collector within the time allowed by such notice in respect of the estate or tenure which they hold, or within any extended time which may have been allowed by the Collector for lodging such return, shall be severally liable to a fine which may extend to fifty rupees for every day after the expiration of such time or extended time until such return is furnished, or until the value of the lands comprised in their respective estates and tenures shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

Penalty for omitting to make return.

[1] Ben. Act 10 of 1871 has been repealed by this Act—see s. 3, ante, p. 374.

(Secs. 19-20.)

The amount of such fine accruing due from time to time may be levied by the Collector as provided in section 98 or 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner shall otherwise direct.

Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

No rent to be recovered till return s made.

19. From and after the expiry of the time allowed by the notice, or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

The Collector may send a list to the Civil Court of all such holders so making default in lodging returns as aforesaid, and such Court shall take judicial notice of the same.

Whenever the required return is lodged in respect of any estate or tenure or whenever the valuation of any such estate or tenure has been otherwise completed, the disability imposed on the holder thereof by this section shall cease; and, if such estate or tenure shall have been included in any list as aforesaid, the Collector shall forthwith give notice to the Civil Court of the cessation of such disability.

No rent to be recovered for land, etc., not mentioned in return.

20. Every holder of an estate or tenure in respect of which a return has been made as required by this Chapter shall be precluded from suing for or recovering—

(a) any rent whatsoever for any land, holding or tenure forming part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;

(b) rent at any higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return:

Proviso.

Provided that the Collector may at his discretion, at any time within six months from the presentation of any return made under this Part, receive a petition correcting any such return;

(Secs. 21-23.)

and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required;

and, as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected shall have paid in all sums due by him as road cess and public works cess in accordance with such corrected valuation and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as payable in respect of such tenure or land.

Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid.

21. If no return shall have been lodged in respect of any lands for which notice under section 16 has been issued, the Collector may, after the expiration of the time allowed by the notice, or of such extended time as is mentioned in section 17, ascertain and fix, by such ways and means as to him shall seem expedient, the annual value of any estate, tenure or lands mentioned in such notice; and all expenses incurred in making such valuation may be recovered with all costs of recovery thereof as provided in sections 98 and 99.

If returns not furnished, Collector to make valuation.

[¹]**22.** If the Collector is satisfied, for reasons to be recorded by him in writing, that any return made under this Act is untrue or incorrect, he may, by such ways and means as to him may seem expedient, ascertain and fix the annual value of the lands in respect of which the return has been made:

Valuation by Collector where return untrue or incorrect.

Provided that no such action shall be taken without giving notice to the person who made the return and allowing him an opportunity to prove that the return is not untrue or incorrect.

[²]**23.** The expense of any valuation made by the Collector under section 22 may be recovered, in the manner prescribed in sections 98 and 99, from the person by whom the untrue or incorrect return was made:

Recovery of expense of such valuation.

Provided that, where such return relates to lands for which no rent is payable by cultivating *raiyats* to the person who made the return, and the annual value of such lands, as determined by the Collector under section 22, does not exceed by one-fifth the value stated in such return; the said expense shall be borne by the District Road Fund.

[¹] This s. 22 was substituted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 6 (in Vol. III of this Code), for the original.

[²] This s. 23 was substituted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 6 (in Vol. III of this Code), for the original.

(Secs. 24-28.)

Person
returned
as cultivating
raiyat may
be served
with notice.

24. The Collector may, whenever he may think fit, cause a notice in the Form No. I in Schedule B contained to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating *raiyat*; and thereupon such person shall be bound to make a return of the annual value of such lands within one month from the service of such notice in the form in Schedule A contained, and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fines respectively shall be applicable to such person.

If no return
made, Col-
lector may
ascertain
annual value
of lands.

25. If no return is made by any person on whom a notice has been served as provided in the last preceding section, the Collector may proceed, by such ways and means as to him shall seem expedient, to ascertain the annual value of the lands held by such person; and, in case it appears that such annual value is greater than the rent paid by such person, the expense of such valuation shall be borne by such person and may be recovered with all costs of recovery thereof as provided in sections 98 and 99, but in all other cases shall be borne by the District Road Fund.

Collector may
correct
classification
in returns.

26. If it shall appear to the Collector that any person on whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating *raiyat*, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder;

and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the cesses in respect of the lands held by him.

Summary
valuation of
small reve-
nue paying
estates and
tenures.

27. Whenever the revenue annually payable in respect of any estate, or the rent annually payable in respect of any tenure, does not exceed the sum of one hundred rupees, the Collector may, without issuing any notice for such estate or tenure,—

- (a) in any case determine the annual value of the land comprised therein to be in a permanently-settled estate or tenure a sum not exceeding three times, and in a temporarily-settled estate or tenure a sum not exceeding twice, the amount of the annual revenue or rent payable therefor; or,
- (b) when the area of the said estate or tenure has been ascertained, determine the annual value of such estate or tenure to be at such rate per acre as to him shall seem fit.

Summary
valuation of
small reve-
nue-free

28. When the area of any revenue-free estates or rent-free tenure, the gross rental of which does not exceed, or is not estimated by the Collector to exceed, the sum of one hundred rupees, has been ascertained,

(Sec. 29.)

the Collector may, without issuing any notice for such estate or tenure, determine the annual value of such estate or tenure to be at such rate per acre as to him may seem fit.

29. When the land contained in any estate or tenure has been summarily valued by the Collector in the manner provided by clause (a) of section 27, the annual value of any portion of such land which is comprised within a tenure subordinate to such estate or tenure shall be determined according to the following rules:—

estates and rent-free tenures of which the area has been ascertained. Computation of annual value of land comprised in a subordinate tenure in a summarily valued estate or tenure.

- (1) When the subordinate tenure comprises the whole of the estate or superior tenure, the annual value of the subordinate tenure shall be taken to be the same as that of the estate or superior tenure.

Example.—An estate paying a revenue of Rs. 80 is summarily valued by the Collector under clause (a) of s. 27 at Rs. 200. The whole estate is let in *patni* for a rent of Rs. 120. The annual value of the *patni* tenure will be Rs. 200.

- (2) When the subordinate tenure comprises a part only of the land constituting the estate or superior tenure—

- (a) the difference between the annual value of the estate or superior tenure, and the revenue or rent payable in respect of such estate or superior tenure, shall first be ascertained;
- (b) next, the ratio which such difference bears to such revenue or rent shall be ascertained;
- (c) then the amount which bears the same ratio to the rent payable in respect of the subordinate tenure shall be ascertained;
- (d) half of the amount so ascertained shall be added to the rent payable in respect of the subordinate tenure; and

the result shall be taken to be the annual value of the subordinate tenure.

Example A.—An estate paying revenue of Rs. 60 is summarily valued by the Collector under clause (a) of s. 27 at Rs. 100. A part only of the estate is let in *patni* for a rent of Rs. 37-8.

The difference between the annual value of the estate (Rs. 100) and the revenue paid in respect of it (Rs. 60) is Rs. 40. This difference bears a ratio of two-thirds to this revenue (Rs. 60).

The amount which bears the same ratio (two-thirds) to the rent payable in respect of the *patni* (Rs. 37-8) is Rs. 25;

add half of Rs. 25 to the rent payable in respect of the *patni* tenure, and the result (Rs. 37-8 + Rs. 12-8 =) Rs. 50 will be the annual value of the *patni* tenure.

Example B.—Within the *patni* tenure paying a rent of Rs. 37-8, as in Example A, is a *darpadni* tenure paying a rent of Rs. 27.

(Secs. 30-33.)

The difference between the annual value of the *patni* tenure ascertained as above (Rs. 50) and the rent payable in respect of the *patni* (Rs. 37-8) is Rs. 12-8, which bears a [¹] ratio of one-third to the said rent.

The amount which bears the same ratio (one-third) to the rent payable in respect of the *darpatni* (Rs. 27) is Rs. 9;

add half of Rs. 9 to the rent payable in respect of the *durpatni*, and the result (Rs. 27+Rs. 4-8=) Rs. 31-8 will be the annual value of the *darpatni* tenure.

When such land may be valued according to rate per acre.

30. When the land contained in any estate or tenure has been summarily valued according to a rate per acre, under clause (b) of section 27, or under section 28, the annual value of the land comprised in any subordinate tenure shall be taken at the same rate per acre as that of the estate or superior tenure.

Holder of summarily valued estate or tenure may lodge return.

31. The holder of any estate or tenure which has been summarily valued under section 27 or 28, may, within one month from the posting of the valuation-roll in respect thereof under section 35, lodge a return in the form in Schedule A contained in regard to such estate or tenure, and thereupon such return shall be deemed to be a return made as required by section 16 and shall be dealt with accordingly.

Collector may value small estate or tenure by regular process.

32. Instead of proceeding to value any estate or tenure summarily under the provisions of section 27 or 28, the Collector may, if he think fit, cause a notice to be served in respect of any such estate or tenure in the Form No. I in Schedule B contained, or in the Form No. II in the said Schedule contained, as the case may be, and thereupon all the provisions of this Part shall apply in the same way as they would have applied if the annual Government revenue or rent payable in respect of such estate or tenure had exceeded one hundred rupee.

Lands used for Tea, Coffee or Cinchona.

Return of plantation, etc.

33. In the case of lands acquired under any rule issued by, or under the authority of, the Government for the sale, lease, grant or clearance of waste-lands, or held directly from Government, and used for the cultivation of tea, coffee or cinchona, the Collector shall, in lieu of the notice prescribed by section 16, cause a notice to be served calling on the holder of such lands to lodge, within two months of the service of such notice, a return in the form in Schedule C contained, giving the particulars in such form set forth; and the annual value of such lands shall be fixed at ten rupees in respect of every acre therein entered as cultivated, unless the Board of Revenue shall in any particular case prescribe a lower rate.

The provisions of sections 18 and 21 shall apply to all lands in respect of which a notice has been issued under this section.

[¹] The word "*ratio*," in Example B, was substituted for the word "*rate*" by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

(Secs. 34-36.)

Publication of Valuation-rolls and Duration of Valuations.

34. Whenever any valuation or re-valuation is made under this Part, the Collector shall cause to be prepared from the returns furnished to him and from the valuations made by him in accordance with this Act a valuation-roll of each estate within his district and of the tenures therein comprised, noting thereon for each estate the amount of revenue annually payable to Government on which the deduction specified in section 41 is to be calculated. Valuation-rolls to be prepared.

On the application of any holder of an estate or tenure or holding, and on payment of such copying fee as the Board of Revenue shall from time to time determine, the Collector shall cause to be furnished to such holder a copy or corrected copy of so much of any such returns, and of any such roll, as relates to the lands included within his estate, tenure or holding.

35. On the completion of every roll prescribed under this Part, the Collector shall cause a copy thereof to be posted up at the *mál-cutcherry* of the estate to which such roll refers, and shall cause extracts of such portions of any such roll as refer to any tenure to be posted up at the *mál-cutcherry* of such tenure: Publication of rolls.

Provided that, if no such *mál-cutcherry* be found, such roll and such extracts shall be posted up at some conspicuous places on the estate and tenures respectively to which they refer, and that, if such estate or tenure cannot be found, such roll and such extracts shall be posted at some conspicuous place in any village in which such estate or tenure is believed to be situate.

The person who is entrusted with the publication of any such return shall obtain an acknowledgment in writing signed by two persons who may be either respectable residents of the neighbourhood, or *chaukidars*, or other officers of Government, to the effect that such return was duly published on the spot, and shall give in such acknowledgment to the Collector. To be attested by two persons.

36. Except as otherwise in this Part expressly provided, every valuation and re-valuation made under this Chapter shall remain in force for the term of five years from the date fixed by the [1]Board of Revenue under section 12 as the date from which the cess leviable in pursuance thereof shall take effect, and thereafter, until an other re-valuation and Valuation and re-valuation for five years.

[1] These words "Board of Revenue," in s. 36, were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Secs. 37-37A.)

assessment in substitution therefor shall have been ordered and completed.

Collector may
reduce
valuation,

37. Nothing in section 36 contained shall be held to debar the Collector, with the sanction of the ^[1]Commissioner from making at any time any reduction which he may think fit in the valuation of any estate or tenure;

and may
value and
assess omitted
and newly-
formed
estates and
tenures.

or from making a valuation of and assessing and levying cess under the rules laid down in this Part upon any estate or tenure which for any reason whatever has been omitted from the valuations and assessments for the time being in force, or which was not in existence when such valuation or assessment was made.

[²]CHAPTER IIA.

PROCEDURE FOR VALUATION OF LANDS IN RESPECT OF WHICH A RECORD-OF-RIGHTS IS BEING PREPARED, REVISED OR MAINTAINED.

Valuation
during pre-
paration,
revision
or main-
tenance of
record-of-
rights.

37A. (1) Notwithstanding anything contained in Chapter II, the ^[3]Board of Revenue may, if they think fit, order ^[4] that a valuation shall be made by the Settlement Officer of any local area, estate or tenure, or part thereof, in respect of which—

- (a) a record-of-rights is being prepared or revised under Chapter X^[5] of the Bengal Tenancy Act, 1885, or any other law ^{8 of 1885.} for the time being in force, or
- (b) a record-of-rights so prepared or revised is being maintained by an officer appointed by the Local Government in that behalf.

(2) Every valuation made under sub-section (1) shall take effect from the beginning of such year as the Board of Revenue^[3] may direct:

Provided that no such valuation shall take effect before the expiration of the period of five years prescribed by section 36 for the continuance of the last preceding valuation (if any).

[¹] This word "Commissioner," in s. 37, was substituted for the words "Board of Revenue," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 7, in Vol. III of this Code.

[²] Chapter IIA (ss. 37A to 37-I) was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 8, in Vol. III of this Code.

[³] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[⁴] For a list of orders made under s. 37A, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁵] Printed in Vol. I of this Code.

(Secs. 37B-37E.)

37B. (1) When an order has been issued by the Board of Revenue^[1] under section 37A, the Settlement Officer shall at the time of preparing or revising the record-of-rights for the local area, estate or tenure, or part thereof to which such order relates, prepare a valuation-roll showing the annual value of all lands comprised within such local area, estate or tenure. Preparation of valuation roll by Settlement Officer.

(2) Where the lands of a local area, estate or tenure, in respect of which a valuation-roll is to be prepared under sub-section (1), are situate in more than one district, the Settlement Officer may prepare the valuation-roll in respect of the lands lying in one district; and valuation may be effected and brought into force for the portion of the local area, estate or tenure situate in such district, in accordance with the procedure hereinafter prescribed.

37C. The Settlement Officer shall, without calling for returns from the holders of estates or tenures, ascertain and fix the annual value,— Method of valuation by Settlement.

- (a) in the case of land the rent of which is payable in cash—on the basis of the rent which has been entered as payable therefor in the record-of-rights, and
- (b) in all other cases—by such ways and means as the Board of Revenue^[1] may prescribe^[2] in that behalf.

37D. Notwithstanding anything contained in section 37C, the Settlement Officer may, for the purpose of ascertaining or fixing the annual value of any land held without payment of rent, other than land mentioned in section 33, and other than estates entered on the general register of revenue-free lands of the district, exercise any of the powers and functions which are exerciseable by a Collector under Chapter IV. Powers and functions of Settlement Officer in regard to valuation of rent-free lands.

37E. When a draft valuation-roll has been prepared, the Settlement Officer— Publication of draft valuation-roll and hearing of objections.

- (a) shall publish the draft together with, and in the manner and for the period prescribed by the law for the time being in force for the publication of, draft records-of-rights, and
- (b) shall receive and consider objections to any entries in the valuation-roll at the time and in the manner prescribed by such law for receiving and considering objections to entries in draft records-of-rights.

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[²] For an order made under s. 37C (b), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 41.)

the Government as proprietor thereof shall, for the purposes of this Part, be deemed to be a tenure and not an estate, and that the Government shall be deemed to be the holder of the estate within which such tenure is included, and thereupon the Collector may recover any sum payable from such tenure under the provisions of this Act, in the same manner and under the same penalties as if the same were arrears of rent or revenue due to him.

Mode of
payment of
road cess
and public
works cess
by holder of
tenure;

41. Except as otherwise in this Act provided,—

(1) every holder of an estate shall yearly pay to the Collector the entire amount of the road cess and public works cess calculated on the annual value of the lands comprised in such estate, at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the revenue entered in the valuation-roll of such estate as payable in respect thereof;

by holder
of tenure.

(2) every holder of a tenure shall yearly pay to the holder of the estate or tenure within which the land held by him is included the entire amount of the road cess and public works cess calculated on the annual value of the land comprised in his tenure at the rate or rates which may have been determined for such cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rates for every rupee of the rent payable by him for such tenure;

by cultivat-
ing *raiyat*;

(3) every cultivating *raiyat* shall pay to the person to whom his rent is payable one-half of the said road cess and public works cess calculated at the said rate or rates respectively upon the rent payable by him, or upon the annual value ascertained under the provisions of section 24 or 25 of the land held by him.

by holders of
chaukidari
chakran
lands.

[1] Notwithstanding anything hereinbefore in this section contained, all persons to whom *chaukidari chakran* lands have been transferred under Part II of the Village Chaukidari Act, 1870,[2] or the heirs or assigns of such persons, shall yearly pay to the Collector the entire amount of the road cess and public works cess calculated on the annual value of such lands at the rate or rates which may have been determined for such

Ben. Act
6 of 1870.

[1] This paragraph was added to s. 41 by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 9, in Vol. III of this Code.

[2] Printed, *ante*, p. 109.

(Secs. 42-43.)

cesses respectively for the year as in this Act provided, less a deduction to be calculated at one-half of the said rate or rates for every rupee of the assessment approved under the said Part as payable in respect of such lands.

42. (1) Every holder of a revenue-paying estate shall pay the amount of road cess and public works cess due by him in equal instalments on the several days fixed [¹][under the provisions of section 3 of Act 11 of 1859,²] or of any similar Act at the time being in force for the payment of arrears] of revenue due in respect of his estate, or, if such revenue be payable in one annual sum, then on the day fixed for the payment of such sum. Time of payment by holder of an estate.

(2) Every holder of a revenue-free estate shall pay the amount of road cess and public works cess due by him in two equal instalments or in one annual payment upon such days or day as shall be for that purpose appointed by any order of the Lieutenant-Governor.

(3) Every holder of a rent-paying tenure and every cultivating *raiyat* shall pay the amount of road cess and public works cess due by him in instalments in the proportion of the instalments of rent payable in respect of the tenure or holding of such tenure-holder or *raiyat*: by tenure-holder and *raiyat*.

Provided that in cases in which, according to local usage or to the terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or *raiyat* shall pay the amount of road cess and public works cess due by him in two equal instalments upon such days as shall be for that purpose appointed by any order of the Lieutenant-Governor.

43. In case of partition of an estate being effected under Regulation 19 of 1814,³ or Bengal Act 8 of 1876,⁴ or any similar Act, after valuation of such estate and while such valuation remains in force, the total valuation of the original estate shall be distributed proportionately [⁵][to the land-revenue] under the order of the Collector over the newly-formed estates whereupon the newly-formed estates shall, for the purposes of this Act, take the place of the original estate, the liability to pay cess in respect of each newly-formed estate being separate and distinct from the liability to pay cess in respect of any other of such newly-formed estates. Distribution of valuation in case of partition.

[¹] These words in square brackets in s. 42 (1) were substituted for the words "for the payment of the instalments" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 5, *post*, p. 429.

[²] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[³] Reg. 19 of 1814 was repealed by the Estates Partition Act, 1876 (Ben. Act 8 of 1876).

[⁴] Ben. Act 8 of 1876 has been repealed and re-enacted by the Estates Partition Act, 1897 (Ben. Act 5 of 1897), in Vol. III of this Code.

[⁵] These words in square brackets in s. 43 were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 6, *post*, p. 429.

(Sec. 44.)

Such separate liability shall take effect from the same date as the separate liability of the newly-formed estates respectively in respect of land-revenue.

Procedure to be followed when there is a partition.

The procedure prescribed by sections 34 and 35 shall be followed whenever a redistribution of the valuation is made in consequence of a partition as mentioned in [1][this section].

Effect of opening separate account under Act 11 of 1859 or Bengal Act 7 of 1876.

44. (1) When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act 11 of 1859,[2] or under section 70 of Bengal Act 7 of 1876,[3] or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of road cess and public works cess under this Act, to all the advantages of separate liability enjoyed by him under the said Act 11 of 1859[2] and Bengal Act 7 of 1876[3] in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of separate notices under this Act from the date on which such advantages shall take effect in respect of the demand of Government revenue.

(2) Whenever any such separate account is opened after the valuation of an estate, and while such valuation remains in force, the Collector shall issue a notice on the holders of the shares severally, in respect of which the accounts are to be kept separately, informing them that, unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the cesses which the whole estate is liable to pay according to the existing valuation will, from the date on which such separate accounts were opened, be apportioned among such shares severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. Such notice shall specify such proportionate amount.

(3) If no such objection be preferred within the time specified, such proportionate amount shall be the amount of the cesses for which the respective holders of such several shares are primarily liable as mentioned in section 13 of Act 11 of 1859[2] subject, however, to the general responsibility of the holders of the entire estate as mentioned in section 14 of the said Act, if the amount of the cesses due on account of any such share cannot be recovered as provided in sections 98 and 99 of this Act from the holders of such share.

[1] These words in square brackets in s. 43 were substituted for the words "the last preceding section" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 6, *post*, p. 429.

[2] The Bengal Land-revenue Sales Act, 1859, in Vol. I of this Code.

[3] The Land Registration Act, 1876, *ante*, p. 235.

(Sec. 45.)

(4) If any such objection shall be preferred as aforesaid, the total amount of the cesses for which the whole estate is liable according to the existing valuation shall be apportioned among the several shares in respect of which such separate accounts are opened in proportion to the annual value of such shares respectively under such rules or special instructions, not being inconsistent with this Act, as may be issued by the Board of Revenue;[¹] and the holders of such several shares shall be primarily liable as aforesaid for the payment of the amount of the cesses so apportioned on their shares respectively.

[²](4a) Whenever a recorded sharer of a joint revenue-paying estate applies to the Collector, under section 10 or section 11, of Act 11 of 1859[³] or section 70 of Bengal Act 7 of 1876,[⁴] for the opening of a separate account of the land-revenue payable by him, he may include in his application a request for the simultaneous opening of a separate account of the road cess and public works cess payable by him.

[²](4b) The Collector may thereupon issue a notice to each of the several sharers of such estate, simultaneously with the notice issued under any of the aforesaid sections, informing him that, unless any objection is preferred to the Collector within six weeks of the service of the notice, the amount of the cesses which the whole estate is liable to pay will, from the date on which such separate account is opened, be apportioned among such sharers severally, in proportion to the amount of Government revenue for the payment of which each share is entered in the separate account as being liable.

[⁵](5) Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause (1) of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share.

45. If any instalment of road cess or public works cess or part thereof of payable to the Collector shall not be paid within fifteen days from the date on which the same becomes due, the amount of such instalment or part thereof may be recovered at any time within three years after it became due, with interest at the rate of twelve [⁶] [and a half] *per centum per annum* calculated from the date on which such instalment became due, and with all costs of recovering the same. Penalty for default of payment of instalments.

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[²] These sub-sections (4a) and (4b) were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 10, in Vol. III of this Code.

[³] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[⁴] The Land Registration Act, 1876. It is printed, *ante*, p. 235.

[⁵] Sub-section (5) was added to s. 44 by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 7, *post*, p. 430.

[⁶] These words in square brackets in s. 45 were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 8, *post*, p. 430.

(Secs. 46-48.)

With permission of the Lieutenant-Governor, Collector may keep separate account of cesses payable by registered holders of revenue-free estates.

46. (1) In any district to which the Lieutenant-Governor may specially order^[1] that the provisions of this section shall be extended, it shall be lawful for the Collector to keep a separate account in respect of the amount of cesses payable and paid by any holder of a revenue-free estate who is recorded in Part I of the Collector's general register of revenue-free lands as proprietor or manager of any specified share or interest in any revenue-free property.

(2) Such separate account shall be opened and kept under such rules as to the levy of fees and other matters, and subject to such conditions and in such manner, as the Board of Revenue may from time to time prescribe;^[2] [and the Collector, if he becomes aware that any separate account opened under sub-section (1) does not represent existing facts, may, after service of a notice on the recorded proprietor or manager, and after hearing any objection which may be preferred within six weeks of such service, close the account.]

(3) As long as any separate account shall remain open as provided in the ^[3] [preceding clause], and no longer, the joint liability of the holders of such revenue-free estate for payment of the entire amount payable in respect of such estate shall cease; and the Collector shall recover the amount of cess or other demand due in respect of each share or interest for which an account has been so separately kept from the holder or holders of such share or interest only; and, if the Collector shall think fit to proceed under section 99, he shall take action under that section against the share or interest only in respect of which the sum demanded is due and the rents thereof.^[4]

Recovery by holders of estates or tenures.

47. Every holder of an estate or tenure to whom any sum may be payable under the provisions of this Act may recover the same with interest at the rate of twelve and half *per centum per annum* in the same manner and under the same penalties as if the same were arrears of rent due to him.

Recovery from co-share holders.

48. Any shareholder in an estate or tenure who may have paid the road cess or public works cess payable in respect of such estate, tenure or any part thereof in excess of the amount proportionate to his own

[¹] For orders made under s. 46 (1) for Bengal as constituted on the 31st March, 1912, see the Bengal Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

[²] These words in square brackets in s. 46 (2), were substituted for the words "and the Board of Revenue may at any time order that any separate account which has been so opened shall be closed from such time as they may direct, and no longer kept as a separate account," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 11, in Vol. III of this Code.

[³] These words in square brackets in s. 46 (3) were substituted for the words "preceding section" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 9, *post*, p. 430.

[⁴] As to the effect of opening a separate account under this section, see also the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 71, *post*, p. 460.

(Sec. 49.)

interest in such estate or tenure, may recover from his co-sharers such sums as he may have paid on account of their respective shares and interests, in the same manner and under similar penalties, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

49. Whenever any shareholder in an estate who is recorded in the general register of revenue-paying and revenue-free lands maintained by the Collector,

Recovery by recorded shareholders from their co-sharers by certificate process.

or whenever any shareholder in an estate the extent of whose share or interest in such estate is recorded in any other register kept up by the Collector of lands paying revenue or rent to the Collector direct,

shall have paid the road cess or public works cess payable in respect of such estate, or any part thereof in excess of the amount proportionate to his own interest in such estate,

he may, within [¹] *six weeks* of such payment being made, move the Collector to make a certificate, as provided by any law [²] for the time being in force for the recovery of public demands, specifying the amount which has been paid in by such shareholder as cess in respect of the recorded share or interest of any other shareholder in the estate;

and thereupon such Collector may, if he think fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand; [²] and the same notices shall be issued and the same proceedings may be taken thereon by the Collector as in case of such certificate :

Provided that the person in whose favour the certificate has been made shall be deemed to be the decree-holder for the sum mentioned in the certificate; and all proceedings taken by the Collector for the recovery of the sums mentioned in the certificate shall be taken at the instance of the person in whose favour the certificate has been made, and at his cost, and on his responsibility, and not otherwise :

Provided also that, if any person against whom such certificate has been made shall object that the amount of the cesses for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a Civil Court as being equitably payable in respect of such person's share or interest in the estate, and if in the opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate, and leave the applicant to his remedy in the Civil Court.

[¹] These words "six weeks" were substituted for the words "fifteen days," for Western Bengal, by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 12, in Vol. III of this Code.

[²] See now the Bihar and Orissa Public Demands Recovery Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 50-52.)

CHAPTER IV.

VALUATION AND ASSESSMENT OF LANDS HELD RENT-FREE, AND PAYMENT AND RECOVERY OF CESS IN RESPECT THEREOF.

Rent-free lands in what estates or tenures to be included for the purposes of this Act.

50. All lands held without payment of rent other than lands mentioned in section 33, and other than estates entered on the general register of revenue-free lands of the district, shall, for the purposes of this Act, be deemed to form a part of any tenure within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any tenure, then to form a part of any estate within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any estate, then to form a part of the estate in which they were included at the original settlement of such estate; and if there be any doubt as to the estate in which they were so included, then to form a part of such conterminous estate as the Collector, in whose district such conterminous estate is situate, shall by an order under his seal appoint.

Holders of estates and tenures bound to return rent-free land and to pay cess at half rates for such lands included therein.

51. Every holder of an estate or tenure who is required by this Act to submit a return in the form in Schedule A contained shall be bound to enter in such return all lands of the nature of those specified in section 50 according to the tenor thereof; and shall be bound to pay road cess and public works cess on the annual value of such lands at one-half of the rates fixed under this Act for the levy of such cesses respectively in the district generally for the year.

Notice and extracts of valuation-roll to be published by Collector in respect of such rent-free lands.

52. Whenever any lands held rent-free shall have been included in the return of any estate or tenure as provided in the last preceding section, the Collector shall, on publication of the valuation-roll of such estate or tenure as provided in section 35, cause to be published a notice in the form in Schedule D contained, to which notice shall be annexed such extracts from the valuation-roll of such estate or tenure as relate to such lands.

Such publication may be lawfully made by affixing one copy of such notice and extracts at some conspicuous place in every village within which any such lands are situate,

by depositing another copy of the same at any police-station, registration-office or other Government office in the neighbourhood for the inspection of all concerned,

and by proclamation as herein next provided,

The proclamation shall be made by beat of drum throughout every such village, and shall be to the effect that such extracts have been so

(Secs. 52A-54.)

affixed and deposited, and that the owners and holders of such lands are required to inform themselves, by inspection of such extracts of the valuation put upon their lands, and to pay yearly to the holder of the estate or tenure in the return of which such lands are included the cesses which shall be payable in respect of such lands under the provisions of this Act.

[¹]52A. Whenever any notice has been duly published under section 52, the Collector shall sign a certificate to that effect, and such certificate shall be conclusive proof that the publication has been duly made.

Certificate of publication of notices under section 52.

53. Within a reasonable time not exceeding thirty days after the issue of any process for the recovery of any sum due from him as cess under this Chapter, the owner, holder or occupier of any such land may make before the Collector an objection to the valuation of his land as entered in the valuation-roll so published, and on such objection being made the Collector shall, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of the land in the possession of such owner, holder or occupier, and may alter such roll accordingly, and shall give notice of any such alteration to the holder of the estate or tenure to which such roll relates :

Holder of rent-free land may object to valuation.

Provided that nothing in this section shall be taken to authorize the Collector to alter any return so as to show any area of land as held rent-free which the maker of such return can show to be accounted for by him in the return as rent-paying land.

54. In the following cases, that is to say :—

- (1) whenever a new valuation or re-valuation takes effect in any district or part of a district;
- (2) whenever the rate fixed for the levy of the road cess or of the public works cess in any year is changed from the rate at which such cess was levied in the preceding year; and
- (3) whenever the dates fixed by the [²]Board of Revenue under section 57 for payment of instalments of the cesses by holders of rent-free land are changed,

Notice to be published by holders of estate in certain cases.

the holder of every estate or tenure to whom any cesses are payable in respect of lands held free of rent shall cause a notice to be published in every village in which any such lands are situate, informing all

[¹] Section 52A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 13, in Vol. III of this Code.

[²] These words "Board of Revenue" were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

(Sec. 55.)

concerned of the rate which has been fixed for the levy of such cesses respectively; and requiring every owner and holder of any such land of which the cesses are payable to the person who causes the notice to be published to pay the amount of the cesses specified in such notice as it falls due, until a similar notice of change of the amount shall be given.

Such notice shall contain the following information in respect of each tenure and holding of rent-free land which is entered separately in the Collector's valuation-roll:—

- [¹](1) a statement of the quantity, or a description, of the land, as entered in the Collector's valuation-roll;
- (2) the name of the owner, holder or occupier of such lands, if known;
- (3) the annual value of such land as entered in the Collector's valuation-roll;
- (4) the rate on each rupee of the annual value which has been fixed under the Act for the levy of the road cess and public works cess respectively for the year;
- (5) the amount of the cesses payable in respect of each tenure or holding, calculated at such rates; and
- (6) the dates fixed by the [²]Board of Revenue under section 57 for the payment of each instalment, together with the amount of each instalment.

Mod. of
publication.

55. Publication of the notice above-mentioned may be lawfully made by affixing one copy of the same at some conspicuous place in every village in which any such land is situate;

by depositing another copy thereof to be available for general inspection at any *mâl-cutcherry* of the estate or tenure in which such land is included, or at any other convenient place in the neighbourhood;

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout such village, and shall be to the effect that such notice has been so affixed and so deposited, that it is open to inspection at the *mâl-cutcherry* or other convenient place as above mentioned, and that every owner and holder of rent-free land is required to inform himself of the contents of such notice and to pay the amount of the cesses due by him accordingly.

[¹] This clause (1) was substituted for the original, by the Bengal Cess (Amendment) Act 1910 (Ben. Act 4 of 1910), s. 14 (in Vol. III of this Code).

[²] These words "Board of Revenue" were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

(Secs. 56-59.)

56. After publication of the extracts from the roll as provided in section 52, and in cases in which publication of the notice mentioned in section 54 is required, after publication of such notice, and not otherwise, every owner and holder of any rent-free land included in such extracts, and every person in receipt of the rents and profits or in possession and enjoyment of such land, shall be bound to pay year by year to the holder of the estate or tenure in the return of which such land has been included the amount of the road cess and public works cess which may thereafter become due to such holder, calculated on the annual value of such land as entered in such extracts, or on any other annual value which may have been determined by the Collector under section 53, at the full rate or rates which may have been fixed under this Act for the levy of such cesses respectively in the district generally for the year.

57. The payment of the cesses for each year by the holder of any land which is held rent-free shall be made by two equal instalments, or in one payment, upon such days or day as shall be for that purpose fixed^[1] by the ^{Instalments to be fixed by Board of Revenue.} ^[2]Board of Revenue.

58. When an instalment of the cesses due on any rent-free land is not paid to the holder of the estate or tenure to whom it is due within one month of the date on which such instalment is payable, such holder shall be entitled to recover a sum equal to double the amount of such instalment due to him under sections 56 and 57, with interest on such sum calculated at the rate of twelve and a half *per centum per annum* from the date on which such instalment was payable, and with all costs of suit: ^{If instalments not paid within a month double the amount may be recovered.}

Provided that such holder shall have paid to the Collector all sums due to such Collector up to date in respect of road cess and public works cess, and not otherwise.

59. If the holder of any estate or tenure shall have omitted to enter in his return (whether such return was made under Bengal Act 10 of 1871,^[3] or under this Act) any rent-free land which he was bound to enter in such return, such holder may at any time after the passing of this Act give in to the Collector a supplementary return showing the necessary particulars in respect of the land so omitted in the form given in Part IV of Schedule A, and shall thereupon pay to the Collector the amount of the cesses which would have been payable by him to such ^{Holders of estates, etc., may send in supplementary returns in respect of rent-free lands.}

^[1] For a list of orders made under s. 57, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] These words "Board of Revenue," in s. 57, were substituted for the words "Lieutenant-Governor," by the Bengal Cess Amendment Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[3] Ben. Act 10 of 1871 has been repealed by this Act—see s. 3, *ante*, p. 374.

(Secs. 60-64.)

Collector in respect of such land for the three years next preceding, or for any shorter period which may have elapsed since the estate or tenure was last valued.

Effect of supplementary returns.

60. Such supplementary return shall to all intents and purposes have the same effect as a return duly made under the provisions of section 51; and sections 51 to 56 (both inclusive) shall be applicable to and in respect of any rent-free land included in such supplementary return.

Sections applicable to amount payable by owner, etc., of rent-free land.

61. The provisions of sections 57 and 58 shall be applicable to every amount which, as provided in section 56, may become payable by the owner and holder of any such rent-free land to the holder of any such estate or tenure after the fulfilment of the requirements in sections 52, 53 and 54 contained.

Section 58 not applicable to such amounts until sections 52, 53 and 54 are complied with.

62. The provisions of section 58 shall not be applicable to any such amount which may have become so payable under the provisions of Bengal Act 10 of 1871,^[1] or of this Act before the fulfilment of the requirements of the sections 52, 53 and 54; but, when any instalment of cess which may have become payable before the fulfilment of such requirements has not been paid to the holder of such estate or tenure on the date on which such instalment was payable, the holder of such estate or tenure may recover the amount of such instalment, together with interest at the rate of twelve and a half *per centum per annum* on such amount, and with all costs of suit:

Provided that no holder of an estate or tenure shall recover any amount under the provisions of this section unless he has paid to the Collector all sums which became payable by him to such Collector on account of road cess and public works cess at any date within the year in which the amount sought to be recovered became payable to such holder of an estate or tenure.

Owner of rent-free land liable to pay cess in future.

63. As soon as the said requirements shall have been fulfilled in respect of any such land which is included in any such supplementary return, every owner and holder of such land and every person in receipt of the rents and profits, or in possession and enjoyment of such land, shall be bound to pay the amount of the road cess and public works cess which may thereafter become due on such land to the holder of the estate or tenure, in the supplementary return of which such land has been included. Sections 56 and 57 and 58 shall be applicable to the cesses so payable.

Additional return of rent-free land

64. (1) Every holder of an estate or tenure who has included any rent-free lands in any return made to the Collector in respect of his estate

[¹] Ben. Act 10 of 1871 has been repealed by this Act—see s. 3, *ante*, p. 374.

(Secs. 64A-64B.)

or tenure under the provisions of the Bengal Act 10 of 1871^[1] and has paid to the Collector any cess payable under the said Act, or under the Bengal Act 2 of 1877^[1] in respect of the said rent-free lands, may at any time after the commencement of this Act give in to such Collector an additional return in the form given in Part IV of Schedule A.

entered in return under Bengal Act 10 of 1871 may be made.

(2) Such additional return shall be deemed to be a supplementary return within the meaning of section 59, and from the date of the inclusion of any such lands in such additional return the same consequences shall ensue, and the same rights and obligations accrue to the Collector and to the holder of such estate or tenure, and the same liabilities shall attach to the owner, holder and occupier of such lands, as would have attached to them respectively if such lands had been included in a supplementary return given in under section 59.

Additional return to be deemed supplementary return.

[²]64A. All sums due to the holder of any estate or tenure under the provisions of this Chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation :

Holders of estates, etc., how to recover from holders of rent-free lands.

Provided that, if any such objection as is mentioned in section 53 has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

[²]64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and be followed by the same consequences in respect of the execution of such decree against the owner or holder of such land, and in respect of the sale of such land in such execution, as if the suit had been brought and the decree given against such owner or holder of such land, but shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.

Owner, holder or occupier of rent-free lands may be sued : Decree against occupier tantamount to decree against owner.

[¹] Ben. Acts 10 of 1871 and 2 of 1877 have been repealed by this Act—see s. 3, ante, p. 374.

[²] Sections 64A and 64B were inserted by the Bengal Cess (Amendment No. 1) Act, 1881 (7 of 1881), and are to be deemed to have been inserted from the date on which Ben. Act 9 of 1880 came into force—see Act 7 of 1881, s. 1, in Vol. I of this Code.

(Secs. 65-67.)

Occupier may deduct cess paid from rent.

65. Whenever any occupier of land which is held rent-free by the owner thereof shall have paid any sum as cess due in respect of such land to any holder of an estate or tenure to whom such cess is payable, such occupier shall be entitled to deduct the sum so paid by him from the rent next thereafter payable by him to the owner of such land, until such sum is fully adjusted.

Notice to be served on holder of rent-free land requiring him to lodge return.

66. Notwithstanding anything in this Chapter contained, the Collector may at any time cause a notice as mentioned in section 16 to be served on the holder of any rent-free land which he shall consider not to have been entered in the return of any estate or tenure in which such land ought to have been included under the provisions of section 51.

Such notice shall require the holder of such land to lodge at the office of the said Collector a return in the form in Schedule A contained in respect of such land;

and on service of such notice the provisions of this Chapter shall no longer apply to such lands; but the same consequences shall ensue and the same liabilities shall attach to the holder of such land as would have ensued and would have attached if such lands had constituted a revenue-free estate.

If the Collector has reason to believe that any land in respect of which he determines to serve such notice has been included in the return of any estate or tenure, he shall give notice of his intention to the holder of such estate or tenure, and shall alter such return as may be requisite, and shall correct the valuation and assessment of such estate or tenure as may be required.

If no notice served, such holder bound to notify omission to Collector.

67. If within one year of the commencement of this Act no notice has been served as mentioned in section 66 on the holder of any rent-free land requiring him to lodge a return in the office of the Collector, and if such land has not been included in any extracts from the returns of estates and tenures published by the Collector under section 52 or other similar section, the holder of such rent-free land shall be bound within one month of the expiration of such year to give information of such omission to the Collector, together with a description of the said land, a specification of the village or villages within which it is situate, the area in each village, and the amount of rent payable to him thereupon:

Provided that no holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise than after the issue of any notice by the Collector in respect of his lands give such information to the Collector shall be liable to prosecution for omitting to give such information within the prescribed time.

(Secs. 68-72.)

68. On receipt of such information, whether within the time prescribed or after the expiration thereof, the Collector may, by an order in writing, require such owner or holder to make a return of his land in the form in Schedule A contained, or, if the gross rental of such land does not exceed one hundred rupees, may order that such land shall be summarily valued under section 27 or section 28, and may proceed to make such valuation.

Collector thereupon may require such holder to make return.

69. Every order made by a Collector under the last preceding section shall have the same effect and be followed by the same consequences as the issue of a notice by the Collector under section 66.

Order to have effect of notice.

70. As soon as any rent-free land which had not previously been included in the valuation of any estate or tenure, has been valued by the Collector after the issue of a notice as provided in section 66, or after an order made under section 68, the holder of such land shall become liable to pay to the Collector the road cess and the public works cess due on such land, in accordance with such valuation, for the three years last preceding such valuation, at the full rates at which such cesses were respectively levied for each such year in the district generally, together with interest calculated at twelve and a half *per centum per annum* on each instalment from the date on which such instalment would have been payable if such valuation had been in force.

Liability of such holder to pay arrears of cesses.

71. No owner or holder of rent-free land on whom a notice has been served by the Collector under section 66, or in respect of whose land an order has been made by the Collector under section 68, shall be liable to have the land to which such notice or order refers included in any return of an estate or tenure, or to pay any amount as road cess or public works cess otherwise than to the Collector or to some person appointed by him in that behalf, unless, on a re-valuation of any estate or tenure being made, the Collector shall by an order in writing direct that for the future such land shall be included within such estate or tenure for the purposes of this Act;

Such holder is not liable to pay cesses except to Collector or his Deputy.

and, upon such order being made, the provisions of this Chapter, in so far as they are applicable, shall apply to the assessment and payment of road cess and public works cess in respect of such land.

CHAPTER V.

VALUATION, ASSESSMENT AND LEVY OF CESSSES ON MINES, RAILWAYS AND OTHER IMMOVABLE PROPERTY.

72. On the commencement of this Act in any district, and thereafter before the close of each year, the Collector of the district shall

Notice to return profits.

(Secs. 72A-74.)

cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway and other immovable property not included within the provisions of Chapter II, and not being one of the tramways or railways mentioned in section 8; such notice shall be in the form in Schedule E contained, and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months a return of the net annual profits of such property, calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.

Such Collector may in his discretion extend the time allowed for lodging such return.

Penalty for omitting to lodge a return.

[¹] **72A.** (1) Any owner, chief agent, manager or occupier who, without sufficient cause being shown to the satisfaction of the Collector, refuses or omits to lodge the required return in the office of the Collector within two months from the date of the service upon him of a notice under section 72, or within any extended time which may have been allowed by the Collector for lodging such return, shall be liable to a fine which may extend to fifty rupees for every day after expiration of such time or extended time until such return is furnished, or until the annual net profits of the property in respect of which the notice has been served shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

(2) The amount of such fine accruing due from time to time may be levied by the Collector or as provided in section 98 or section 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner otherwise directs.

(3) Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

When property lies in different districts.

73. Whenever any property assessable under this Chapter lies in two or more districts, the notice to furnish a return under section 72 shall be served on the owner, chief agent, manager or occupier of such property by or through the Collector of the district in which such owner, chief agent, manager or occupier may reside or have his chief place of business, and one return for the whole of such property shall suffice.

When property is partly in and partly outside Bengal.

74. Whenever any property assessable under this Chapter lies partly within and partly outside the territories administered by the

[¹] Section 72A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 15, in Vol. III of this Code.

(Secs. 75-79.)

Lieutenant-Governor of Bengal,[¹] the return furnished as required by section 72 shall state the total annual net profits calculated as aforesaid accruing from such property, and also the proportion of such profits which may reasonably be calculated to accrue in the territories administered by the Lieutenant-Governor of Bengal.[¹]

75. If such return be not furnished within the period of two months from the date on which such notice was served, or within any extended time allowed by the Collector of the district, or if such Collector shall deem that any return made in pursuance of such notice is untrue or incorrect, such Collector shall proceed to ascertain and determine by such ways or means as to him shall seem expedient the annual net profits of such property calculated as aforesaid.

If return not furnished or incorrect, Collector to make valuation.

76. If such Collector be unable to ascertain the annual net profits as aforesaid of any property assessable under this Chapter, he may, by such ways or means as to him shall seem expedient, ascertain and determine the value of such property, and shall thereupon determine six *per centum* on such value to be the annual net profits thereon.

Valuation on value of property.

77. The expenses incurred in making any valuation under section 75 or section 76 may be recovered together with all costs of the recovery thereof as provided in section 98 from the person who was bound to make such return or who made the incorrect return.

Cost of valuation from whom to be recovered.

78. So soon as such Collector shall have ascertained and determined the annual net profits as aforesaid of any such property, he shall cause to be served upon the owner, chief agent, manager or occupier of such property a notice informing him of the amount of the annual net profits so ascertained and determined by him.

Notice of valuation.

79. New valuations under this Chapter shall be made by the Collector of the district every year, and such Collector may for that purpose cause such notices to be issued and served, and such returns to be made, and shall have such powers and authorities as are in this Part mentioned and conferred:

Valuations under this Chapter to be annual.

Provided that, whenever any return made under section 72 shall be accepted by the Collector for any year, the owner, chief agent, manager or occupier of such property may, if he see fit, declare in writing at the time of such acceptance that the annual net profits set forth in such return may, for the purposes of this Act, be deemed to be the annual net profits for each of the five years then next ensuing:

Declaration of annual net profits by owner for five years.

and, if the Collector of the district shall agree to accept such declaration, no new valuation shall be made of such property until the said five years shall have expired.

Effect of acceptance by Collector of declaration.

[¹] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 80-83.)

Notice of rate
of cess and
dates of
payments.

80. When the rate of road cess and public work cess to be levied in the district upon property assessable under this Chapter shall have been determined for any year as in this Act provided, the Collector of the district shall cause to be served on the owner, chief agent, manager or occupier of every such property a notice showing the amount of road cess and public works cess respectively payable in respect of such property, and specifying the date from which such cesses shall take effect.

And such amount shall be payable by such owner, chief agent, manager or occupier to such Collector in two equal instalments—the first on the expiry of six months, the second on the expiry of nine months, after the date fixed as hereinbefore provided for the commencement of the year.

Recovery by
occupier of
owner who
has paid in
excess.

81. In any case in which the occupier of such property is a different person from the owner, and has paid in excess of half of the sum due as road cess and public works cess on account of any instalment, such occupier shall be entitled to deduct the amount of such excess from the next and subsequent instalments of rent payable in respect of such property; and every owner who has paid in excess of half of such sum due shall be entitled to recover the amount of such excess from the occupier :

Provided that in no case shall an occupier deduct from his annual rent more than half of the rate of the road cess and public works cess on every rupee thereof.

How distri-
buted when
property in
different
districts.

82. The total of the cesses payable in respect of property assessable under this Chapter owned or occupied by the same person in two or more districts shall be payable to the Collector of the district where the owner, chief agent, manager or occupier may reside or have his chief place of business, and shall be by him transmitted to the Collectors of other districts in the proportion in which the [¹] *District Road Funds* of such districts shall be severally entitled thereto, as provided in the section next following.

Determin-
ation of pro-
portion of
profits when
property in
different
districts.

83. Whenever any property assessable under this Chapter lies in two or more districts, the Lieutenant-Governor shall from time to time determine, out of the total annual net profits stated in the return, or in the valuation of such profits accruing in the territories subject to him, and ascertained in any manner as aforesaid, the proportions in which such property shall be assessed in each of the said districts respectively, and the proportion of the road cess due thereon which shall be assigned to the [²] *District Road Fund* of each district concerned.

[¹] These words " District Road Funds " were substituted for the word " Committees," in s. 82, by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, *post*, p. 650.

[²] These words " District Road Fund " were substituted for the word " Committee," by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, *post*, p. 650.

(Secs. 84-88.)

84. Every notice under this Chapter may be served—

Service of
notices under
this Chapter.

- (a) by leaving it at the registered office (if any) of such owner, chief agent, manager or occupier aforesaid; or
- (b) by sending it by post in a letter addressed to such owner, chief agent, manager or occupier at his office, or, if he have more offices than one, at his principal office; or
- (c) by giving it to such owner, chief agent, manager or occupier.

CHAPTER VI.

SPECIAL PROVISIONS FOR ORISSA [*and Midnapore.*]

85. In any district of the Province of Orissa [*and in the district of Midnapore,*] the Collector may at any time, with the sanction of the Commissioner, order that any revenue-free estate not exceeding five hundred standard *bighas* in extent, of which the valuation shall have been completed, shall, for the purpose of payment and levy of the cesses due in respect thereof, be annexed to any other estate within the ambit of which it is situate or which it adjoins.

Collectors in
Orissa and
Midnapore
may order
certain
revenue-free
estates to be
annexed to
other estates
for purposes
of payment
of cess.

86. Notice of such order shall be given by the Collector to the holder of the estate to which such revenue-free estate is ordered to be so annexed, and to such notice shall be appended a copy of the valuation-roll of the said revenue-free estate and thereupon such holder shall be liable to pay annually to the Collector, on account of such revenue-free estate, road cess and public works cess at one-half of the rates which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

Notice to be
given to hold-
er of estate
to which such
revenue-free
estate is
annexed.

87. Notice of such order shall also be given by the Collector to the holder of the said revenue-free estate, and such notice shall require him to pay annually, and he shall thereupon be bound to pay to the holder of such other estate road cess and public works cess at the full rates which may be fixed under this Act for the levy of the said cesses respectively in the district generally for each year.

Notice to be
given to
holder of
revenue-free
estate.

88. Such cesses shall be so payable by the holder of the said revenue-free estates in two equal instalments, on such dates as may be fixed by the Lieutenant-Governor under section 42 for the payment of cess by the holders of revenue-free estates, or in such other instalments and on such other dates as the Lieutenant-Governor may direct, or, if the Lieutenant-Governor shall so order, the whole amount so payable on

Cesses pay-
able by
holder of
revenue-free
estate in such
instalments as
Lieutenant-
Governor
may direct.

(Secs. 89-91A.)

account of such cesses for each year shall be payable in a single sum on any such date as the Lieutenant-Governor may appoint.

In default of payment as hereby required, the provisions of section 47 shall be applicable.

Notices to be served.

89. Whenever the service of a notice on the holder of a revenue-free estate is required by the provisions of section 40, the Collector shall cause such notice to be served, notwithstanding that the revenue-free estate may have been annexed to another estate as hereinbefore provided;

and the Collector shall further cause a notice containing the same particulars to be served in respect of such revenue-free estate on the holder of the other estate to which it is under the provisions of section 85 annexed.

Collector may revoke orders passed under section 85.

90. The Collector may at any time, with the sanction of the Commissioner, revoke any order passed under section 85, and shall give notice of such revocation both to the holder of the revenue-free estate affected and to the holder of the other state to which such revenue-free estate was annexed.

CHAPTER VII.

MISCELLANEOUS.

Collector may appoint certain establishments.

91. The Collector, with the sanction of the Board of Revenue,^[1] may appoint such establishments as may be required for making valuations and re-valuations under this Act, for making collections, recovering arrears, keeping accounts connected therewith, and generally for all purposes connected with such valuations, re-valuations, collections and recoveries, and other purposes of this Act, and may incur such other expenses as are requisite for such purposes;

and the payment of such establishments and other charges on bills signed by the Collector shall be the first charge on the District Road Fund.

Payment of commission to *tahsildars*.

^[2]**91A.** The Collector may, with the sanction of the Commissioner, pay to any person appointed by him to collect the road cess and public works cess such percentage of the total amount collected by such person as to him may seem fit.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[2] Section 91A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 16, in Vol. III of this Code.

(Secs. 92-96.).

92. For the purpose of making any valuation of lands directed by this Part, the Collector shall exercise the powers vested in Collectors by clause 1 of section 23 and clause 1 of section 24 of Regulation 7 of 1822,[¹] except so far as the said clauses authorize any inquiry into rights or interests attaching to such lands.

Powers of Collector in making valuation.

93. Every valuation under this Part shall be open to revision by the Commissioner or Board of Revenue,[²] and not otherwise.

Commissioner or Board may revise valuation.

94. Any person who is bound to make any return under this Part shall be deemed to be legally bound to give notice and to furnish information to a public servant in respect of the same.

False returns.

If the Collector shall see ground for believing that any return made is false, he may prosecute the maker accordingly.

[³]* * * *

95. Every return filed by or on behalf of any person in pursuance of the provisions of this Part shall bear the signature and address of such person, or his authorized agent, and shall be admissible in evidence against such person, but shall not be admissible in his favour.

Returns evidence against the maker only.

96. Every notice under this Part required to be served, except as otherwise expressly provided, may be served—

Service of notices under this Part.

- (1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to any agent authorized to appear generally for the person to whom such notice is directed; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode or to the place where he may be known to reside; or
- (3) by posting a copy of the notice at the *mâl-cutcherry* of the estate or tenure to which the notice relates, or, if no such *mâl-cutcherry* be found, on some conspicuous place on such estate or tenure; and, in the case of estates paying their annual revenue by four instalments, by delivering another copy thereof to the agent who shall have paid an

[¹] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol. I of this Code.

[²] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[³] The words "And, if the person so prosecuted is convicted, the Collector may proceed to make a valuation of the lands mentioned in such return, by such ways and means as to him shall seem expedient" were repealed by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 17, and are here omitted.

(Secs. 97-99.)

instalment of revenue next after the preparation of such notice. In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

Costs of
service.

97. The costs of service of every notice and process by this Act required to be served shall in the first instance be defrayed from the District Road Fund, and, subject to such rules as may be made by the Board of Revenue^[1] under section 106, shall be recoverable either from the person to whom such notice or process is addressed, or from the person owing to whose default such notice or process is issued, as the Collector may think fit; and every such amount shall be deemed to be due to the Collector, but when levied by the Collector shall be credited to the District Road Fund:

No costs to be
recovered for
such notices.

Provided that no costs or other expenses whatever shall be recovered from any person in respect of the publication or issue of any proclamation or notice calling for any return or giving intimation of any amount payable by any person as cess under this Act other than notices of demand to pay any amount of cess which has become due.

Dues under
the Act to be
levied as
public
demand.

[2]98. Every amount due, or which may become due, to any Collector under the provisions of this Act in respect of any arrears of cess, of any expenses incurred, of any fee or costs payable, of any notices served, of any fines imposed, or on any other account, may be realized by such Collector by any process provided by any law^[3] for the time being in force for the realization of public demands; and shall be deemed to be a public demand under such law:

Provided that the ^[4]*District Road Fund* shall indemnify the Collector of the district for all expenses incurred, and for all costs and damages for which such Collector may become liable (whether in connection with suits before the Civil Courts or otherwise) in respect of any proceedings for the recovery of any such dues as aforesaid.

Collector may
recover dues
out of rent.

[5]99. Instead of proceeding as provided by last preceding section for the recovery of any sum due under this Act, or if after so proceeding the Collector shall have failed to find property belonging to the

[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[2] Section 98 is also applicable to the recovery of fines imposed under s. 18 and certain other sums—see ss. 18 and 77, *ante*, pp. 381, 407.

[3] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

[4] These words "*District Road Fund*" were substituted for the words "*District Road Committee*" by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, *post*, p. 650.

[5] Section 99 is also applicable to the recovery of fines imposed under s. 18—see the latter section, *ante*, p. 381.

(Secs. 100-101.)

person from whom any such sum is due, by the sale of which such sum may be fully recovered, the Collector may, if he see fit, after recording his opinion to that effect, cause a notification in form in Schedule F contained to be issued for the estate or tenure in respect of which any such amount is due.

Such notification shall be published by beat of drum in every village containing any land to which such notification relates, and a copy thereof shall be posted in a conspicuous place in every such village and at the *mâl-cutcherry* of the estate or tenure to which such notification relates, if such *cutcherry* be found.

Every payment of rent, save and except to the Collector or some person by him thereunto appointed, made after such publication, until further order from the Collector, shall be null and void;

and the Collector may recover by any process of law for the time being in force, by which he might recover rent due to the Government from a tenant in an estate, which is managed directly by the Collector, the rent then or thereafter to become due from any occupier, tenure-holder, under-tenant or *raiyyat* on the estate or tenure in respect of which the notification has been issued, until the amount due to the Collector together with all costs shall be satisfied, whereupon the said notification shall be revoked.

The receipt of the Collector in respect of all sums paid to him as rent or so recovered shall be, to the extent of such sums, a valid discharge in respect of rent due by the occupier, tenure-holder, under-tenant or *raiyyat* to whom such receipt is given.

In case the Collector shall see fit so to proceed, the claim for arrears of road cess and public works cess due from any estate or tenure in respect of which a notification has been issued as above provided shall have priority over any other demand or claim or lien existing thereupon other than the demand of Government revenue.

Collector's claim to have priority.

100. The Lieutenant-Governor may at any time invest any person with the powers of a Collector under this Part to be exercised by such person under the control or supervision of the Collector, or independently of such control and supervision, as the Lieutenant-Governor shall direct.

Lieutenant-Governor may invest any person with Collector's powers.

101. The Collector may, with the sanction of the Commissioner, delegate all or any of his powers and functions under this Part to be exercised, under the control and supervision of the Collector, by any Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer of like rank:

Collector may delegate powers.

(Secs. 102-105.)

Provided that every order passed by such Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer shall be appealable to the Collector within fifteen days of such order being passed.

Appeals
against
valuation.

102. Every person who shall deem himself to be aggrieved by any valuation made by a Collector under the provisions of section 75 or 76, may, within one month after the issue of the notice mentioned in section 78, and, ^[1]*subject to anything contained in Chapter IIA*, every person who shall deem himself to be aggrieved by any valuation made by the Collector under the provisions of any other section of this Part, may, within one month after the posting up of a copy of the valuation-roll as mentioned in section 35,

prefer his objections to the Collector;

and, if such objections, or any of them, are disallowed, may, within one month of such disallowance, appeal to the Commissioner against such valuation, and the decision of the Commissioner shall be final.

Orders for
levy of fine
appealable.

103. Every order for the levy of a fine or of expenses passed by a Collector under this Act shall be appealable to the Commissioner within one month from the service of the first process for the levy of such fine or expenses. Except as otherwise provided in section 18, pending such appeal, and until the order of the Commissioner, which shall be final, all process for such levy shall be discontinued.

Orders
appealable to
Commissioner.

104. Every order passed by the Collector under sections 19, 20, 26, ^[2] 46 (2), 50, 51, 53, 85, 98 or 99 shall be appealable to the Commissioner within one month from the date of such order.

Revision of
orders by
Collector, and
control and
supervision
by Commis-
sioner and
Board.

^[3]**105.** Notwithstanding anything hereinbefore contained,—

(a) the Collector may at any time revise any order made under this Part by himself or by any officer subordinate to him, unless an appeal against such order has been preferred, and

(b) all proceedings of the Collector or of any officer of a lower grade under this Part shall be subject to the general control and supervision of the Commissioner and of the Board of Revenue, and all proceedings of the Commissioner under this Part shall be subject to the general control and supervision of the Board of Revenue.

^[1] These words in italics were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 18, in Vol. III of this Code.

^[2] These figures "46 (2)," in s. 104, were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 19, in Vol. III of this Code.

^[3] Section 105 was substituted for the original by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 20 (in Vol. III of this Code).

(Secs. 106-108.)

106. The Board of Revenue may from time to time make, and, Board may make rules. when made from time to time alter, add to or cancel, any rules^[1]—

- (a) prescribing forms for the notices, returns and valuation-rolls required by this Part to be issued or made;
- (b) prescribing the amounts which shall be levied in respect of the issue of each notice and process under this Part, and regulating the recovery thereof under section 97;
- (c) prescribing the amount of copying fee to be levied in respect of supplying extracts and copies of returns and valuation-rolls as provided in section 34;
- (d) apportioning the amount of the cesses for the payment of which the respective holders of the several shares of an estate in respect of which separate accounts are kept shall be primarily liable under section 44;
- (e) regulating the opening, keeping and closing of separate accounts in respect of amounts of cess payable by recorded shareholders in revenue-free estates as provided in section 46;
- (f) regulating the proceedings of the Collectors under Chapter V;

and otherwise providing for the proper execution of this Act in respect of valuations of the assessment and of the levy of the cesses and other sums due under the same.

107. Nothing in this Part contained, and nothing done in accordance with this Act, shall be deemed to affect the rights of any person in respect of any immovable property or of any interest therein except as otherwise expressly provided in this Act.

All rights in immovable property saved unless affected by this Act.

Part III.—Constitution and Administration of the District Road Fund.

CHAPTER VIII.

CONSTITUTION AND APPLICATION OF THE DISTRICT ROAD FUND.

108. The District Road Fund of every district under this Act shall consist of the amount produced by the road cess,

Constitution of District Road Fund

[¹] For rules made under s. 106, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 109.)

of all sums levied or recovered as fines, penalties or otherwise in respect of the cesses under this Act [¹][not being interest levied in respect of public works cess,]

of all sums assigned by the Government thereto, whether as a contribution from the proceeds of the public works cess towards the expenses of assessing and collecting such cess jointly with the road cess or otherwise,

[²]* * * *

Application
of District
Road Fund.

[³]109. The District Road Fund of every district shall be applicable to the following objects and in the following order:--

Firstly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector *under* section 91.

Secondly.—To the indemnification of the Collector, with the sanction of the Commissioner, for any other costs or damages which he may have incurred, or for which he may have become liable, in the course of the proceedings for the assessment and collection of the cesses under this Act.

And the balance, after payment of such expenses, shall be credited to the District Fund of the district[⁴] [and shall be applicable to the following objects, and in the following order, *namely* :—

- (a) the payment of any sums which the District Board may, under the Bengal Local Self-Government Act of 1885,[⁵] Ben. Act 3 of 1885. from time to time have undertaken to pay as interest on loans raised for expenditure on any of the objects to which the District Road Fund is applicable, and the re-payment of such loans;
- (b) the payment of the percentage referred to in clause Thirdly of section 53 of the said Act;
- (c) the payment of such of the salaries, pensions, gratuities, grants and percentages referred to in clause Fourthly of the said section as are required for members of establish-

[¹] These words in square brackets in s. 108 were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 10, *post*, p. 430.

[²] The words “and, of all sums whatsoever which may be at the disposal of the District Road Committee as hereinafter appointed” were repealed by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, and are omitted.

[³] This s. 109 [except the portion printed within square brackets] was substituted for the original s. 109 by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2.

[⁴] The portion of this s. 109 on this page and page 582 which is enclosed in square brackets were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 64.

[⁵] Printed, *post*, p. 649.

(Sec. 182.)

ments employed for improving the means of communication within the district or between the district and other districts;

- (d) the payment of such of the expenses referred to in clause Fifthly of section 53 of the said Act as are incurred in improving the means of communication within the district, or between the district and other districts, or in carrying out the provisions of section 79 of the said Act;
- (e) the payment of the expenses referred to in clause Seventhly of section 53 of the said Act; and
- (f) the making of investments referred to in clause Eighthly of the said section 53.]

[Sections 110—181 were repealed by the Local Self-Government Act, 1885 (Ben. Act 3 of 1885), section 2.]

Part IV.

CHAPTER XIII.

GENERAL.

182. The Lieutenant-Governor may from time to time make, and, when made, from time to time alter, add to or cancel, any rules, [1]not inconsistent with the provisions of this Act,—

Lieutenant-Governor empowered to prescribe forms and rules.

- * * * * * [2]
- (d) prescribing forms of accounts to be kept by the Collector under this Act;
- * * * * * [2]
- (f) fixing the dates for payment of instalments of cess under sections 42 and 57; [3]
- * * * * * [2]

(i) and generally for the purposes of this Act.

Such rules shall be published in the Calcutta Gazette and shall thereupon have the force of law.

[1] For rules made under s. 182 (c) and (f),—see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] Clauses (a), (b), (c), (e), (g) and (h) of s. 182 were repealed by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, and are omitted.

[3] The powers to fix dates for payment of instalments of cess under s. 57 is now vested in the Board of Revenue—see that section as printed, *ante*, p. 401.

(Schedule A.)

SCHEDULE A.

Form of Return prescribed by section 14.

Amount of Government revenue or rent payable by the estate or
tenure :

Rs. A. P.

PART I.

District

Name by which the estate or tenure is known, and the number which it bears on the Collector's general register, or on any other register kept by the Collector—

Details of lands in the actual occupation or cultivation of the person submitting the return:—

1	2	3	4	5
<i>Pargana.</i>	Name of village and <i>thana</i> in which the lands are situate.	Area of land [''] [if known].	Deduct area of land situate within any municipality.	Annual value of remaining land.

[²] NOTE.—In the body of this statement should be entered only *nijjot* lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.

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[²] NOTE.—In the body of this statement should be entered only *nijjot* lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.

[¹] These words in square brackets in the heading of column 3 of Part I were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 11, *post*, p. 430.

[²] This note to Part I was substituted for the original note by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 11, *post*, p. 430. The original note ran thus:—

Part." NOTE.—Only nijjot lands and unculturable unlet lands should be included in this

(Schedule A.)

PART II.

District

Name and number of estate or tenure as in Part I.

Details of lands held by cultivating *raiyats* paying direct to the persons submitting the return:—

1	2	3	4	5	6	7
<i>Pargana.</i>	Name of village and <i>thana</i> in which the lands are situate.	Name of <i>raiyat</i> , name of village <i>thana</i> and district in which he resides.	Area occupied [if known.]	Annual rent.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

PART III.

District

Name and number of estate or tenure as in Part I.

Details of the tenure-holders paying to the person submitting the return:—

1	2	3	4	5	6	7	8
Name of tenure-holder and person paying rent for him borne on the books of holder of estate or tenure.	Name of village, <i>thana</i> and district in which such person resides.	Name of village and <i>thana</i> in which tenure is situated.	Name of village and <i>thana</i> in which <i>mal-cutcherry</i> is situate.	Area if known.	Annual rent paid by tenure-holder.	Deduct rent of land included in any municipality.	Balance of net rent assessable.

[¹] These words in square brackets in the heading of column 4 of Part II were added by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 12, *post*, p. 430.

(Schedule B.)

PART IV.

District

Name and number of estate or tenure as in Part I.

Details of lands included in the estate or tenure of the person submitting the return which are held by others than himself but for which no rent is paid:—

1	2	3	4	5	6	7
<i>Pargana</i> in which situate.	Name of village and <i>thana</i> in which situated.	Name of holder, and owner, if known.	Name of village, <i>thana</i> and district in which the holder resides.	Area, if known.	Deduct area of land included in any municipi- pality.	Annual value of remaining land.

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed

N.B.—This return must be signed by the holder or his authorized agent, whose address must also be given.

SCHEDULE B.

FORM No. I.

Form of Notice upon a Revenue-paying Estate or Rent-paying Tenure under section 17.

District of

NOTICE UNDER SECTION 17 OF THE CESS ACT, 1880.

THE holders of estate or tenure (*description to be filled in*) in the district of and all others interested therein

(Schedule B.)

are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure and the rents paid therefor. Such return must be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him, until such return shall be lodged. Notice is hereby given that no rents due to the holders of the said estate (*or* tenure) can be recovered by suit after such time until such return be so lodged.

If the annual amount of revenue or rent payable on the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If such amount exceeds Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

COLLECTOR'S OFFICE.

(Sd.) A. B.,

Dated

Collector.

N.B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in Schedule A.

FORM No. II.

*Form of Notice upon a Revenue-free Estate or Rent-free
Tenure under section 17.*

District of

NOTICE UNDER SECTION 17 OF THE CESS ACT, 1880.

THE holder of the revenue-free estate of rent-free tenure (*description to be filled in*) in the district of _____ and all others interested therein are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure. Such return must be

(Schedule C.)

signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him until such return shall be lodged.

Notice is hereby given that no rents due to the holders of the said estate (*or* tenure) can be recovered by suit after such time until such return be so lodged.

If the gross annual rental of the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If the gross rental exceeds Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

COLLECTOR'S OFFICE.

(Sd.) A. B.,

Dated

Collector.

N.B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in Schedule A.

—:—

SCHEDULE C.

Form of Notice under section 33.

Dis'ict of

NOTICE UNDER SECTION 33 OF THE CESS ACT, 1880.

THE owner, the chief agent, manager or occupier of (*give the name by which the concern or property is known*) situated in the district of _____, is hereby required to lodge in the office of the Collector of _____ a return in the form hereunto annexed, showing the amount of land under cultivation at the date of this return in the said _____. Such return must be signed by him and be lodged within the space of two months from the service of this notice (unless within the said two months such owner, chief agent, manager or occupier obtain from the Collector an extension of the said

(Schedule C.)

space of two months), under penalty of a daily fine of fifty rupees for every day after the expiry of such period or extension thereof until such return shall be presented.

Form of return to be annexed to the Notice.

Dis'ict

Details of lands acquired under any rules for the sale, lease, grant or clearance of waste lands or held direct from Government and used for the cultivation of tea, coffee or cinchona, under the control of the person submitting the return:—

1	2	3	4	5	6	7
Districts	<i>Parganas and thanas</i>	Designation by which the estate, lot or grant is known, and the number it bears on any register kept by the Collector.	Name of owner, agent, manager or occupier.	Entire area of land.	Area or areas of lands under cultivation.	Aggregate value at Rs. 10 per acre of land in [1] [column 6.]
in which the lands lie.						

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed

N.B.—This return must be signed by the owner, chief agent, manager or occupier.

[¹] This word and figure in square brackets in the heading of column 7 were substituted for the word and figure "column 5" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 13, *post*, p. 430.

(Schedules D and E.)

SCHEDULE D.

*Form of Notice under section 52.*NOTICE TO HOLDERS OF LANDS HELD RENT-FREE UNDER
SECTION 52 OF THE CESS ACT, 1880.

NOTICE is hereby given to all concerned that the lands specified in the annexed extracts from valuation-rolls of estates and tenures have been entered by the holders of such estates and tenures in the valuation-returns of their estates and tenures under the Cess Act, 1880, and have been valued as shown in the extracts.

Every owner and holder of any land entered in these extracts may appear before the Collector within one month of the publication of this notice, and may object to the amount at which his land has been valued.

If no such objection is made, the owners and holders of lands will be bound to pay year by year to the holder of the estate or tenure in which his land has been entered the amount of road cess and public works cess calculated on the annual value of such land as entered in these extracts at the full rate which may be fixed for the year in the district.

If any instalment of the cess due upon any of the lands included in these extracts is not paid to the holder of the estate or tenure on or before the date which the Lieutenant-Governor^[1] may fix for the payment of such instalment, the holder of the estate or tenure will be entitled to recover double the amount due with interest and all costs of suit.

SCHEDULE F.

Form of Notice under section 72.

District of

NOTICE UNDER SECTION 72 OF THE CESS ACT, 1880.

THE owner, chief agent, manager or occupier of the (*give the designation of the property*), situated in the district of _____, is required to lodge in the office of the Collector of the district of _____ a return in the form hereunto annexed, showing the net profits of the _____ calculated on the average of the profits of the _____

[¹] Now the Board of Revenue—see s. 57 as printed *ante*, p. 401.

(Schedule E.)

last three years for which accounts have been made up. Such return must be signed by him or his authorized agent, and be lodged within the space of two months from service of this notice, unless within the said two months an extension of the time allowed is obtained from the Collector.[¹]

COLLECTOR'S OFFICE,

(Sd.) A. B.,

Dated

Annexed form of Return.

District

Detail of yearly profits of mines, quarries, railways and tramways or other immovable property in the possession or under the control of the person submitting the return:—

1	2	3	4
Districts	Parganas	Name of holder or manager.	Annual net profits per annum on the average of the last three years for which accounts have been made up.
in which the property lies.			

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed

N.B.—This return must be signed by the owner, chief agent, manager or occupier.

[¹] For penalty for omitting to lodge a return, see s. 72A, ante, p. 406.

(Schedule F.)

SCHEDULE F.

Form of Notice under section 99.

District of

NOTICE UNDER SECTION 99 OF THE CESS ACT, 1880.

THE occupiers, tenure-holders, under-tenants and *raiyats* on estate or tenure (*the estate, tenure or lands to be here clearly designated*) are hereby prohibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district or to (*name of person*) hereby appointed to receive the same. The Collector will grant receipts for all sums paid; and such receipts will, under the provisions of the above Act, be a valid discharge, to the extent of the sums covered by such receipts, for rent due, or become due, as above stated by the holders of such receipts. All payments, except to the Collector, until further order, will be null and void.

(Sd.) A. B.,
Collector.

BENGAL ACT 2 OF 1881.

[THE BENGAL CESS (AMENDMENT No. 2) ACT, 1881.]

CONTENTS.

PREAMBLE.

SECTION.

1. Amendment of section 9 of the Cess Act, 1880.
2. Amendment of section 10.
3. Amendment of section 13.
4. Introduction of new section after section 40.
5. Amendment of section 42, clause (1).
6. Amendment of section 43.
7. Addition to section 44.
8. Amendment of section 45.
9. Amendment of section 46.
10. Amendment of section 108.
11. Amendment of Schedule A, Part I.
12. Amendment of Schedule A, Part II.
13. Amendment of Schedule C.

BENGAL ACT 2 OF 1881.

[THE BENGAL CESS (AMENDMENT No. 2) ACT, 1881.][¹]

(4th May, 1881.)

An Act to amend the Cess Act, 1880.[²]

Ben. Act 9 of
1880.

Whereas it is expedient to amend the Cess Act, 1880,[²] passed by the Lieutenant-Governor of Bengal in Council; It is hereby enacted as follows:—

1. In section 9 of the Cess Act, 1880, for the figures “111” the figures “109” shall be substituted. Amendment of section 9 of the Cess Act, 1880.
2. In section 10, after the words “public works cess,” the words “and all interest paid thereon” shall be inserted. Amendment of section 10.
3. In section 13, after the words “in accordance with any valuation” the words “or re-valuation” shall be inserted. Amendment of section 13.
4. After section 40 the following section shall be inserted, namely:—
40A. [Printed *ante*, p. 391.] Introduction of new section after section 40.
5. In section 42, clause (1), for the words “for the payment of the instalments,” the following shall be substituted:—“under the provisions of section 3 of Act 11 of 1859, or of any similar Act at the time being in force for the payment of arrears.” Amendment of section 42, clause (1).
6. In section 43, after the word “proportionately” the words “to the land-revenue” shall be inserted. Amendment of section 43.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see *Calcutta Gazette*, 1881, Pt. IV, p. 3; and for Proceedings in Council, see *ibid*, 1881 Supplement, pp. 144, 148, 200 and 206.

LOCAL EXTENT.—Since this Act merely makes textual amendments in Ben. Act 9 of 1880, and contains no “local extent” clause, its local extent must be taken to be the same as that of the Act of 1880, *ante*, p. 373.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum in the Chota Nagpur Division, see Vol. IV, Pt. III.

For the reasons mentioned above, the Act must be taken to be in force in those tracts in the Sonthal Parganas in which Bengal Act 9 of 1880 has been declared in force; but its operation in the other deregulationised tracts in Bihar and Orissa, is barred as follows:—

in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code,

in the tracts in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, *ibid*.

[²] Printed *ante*, p. 373.

(*Secs. 7-13.*)

In clause 3 of the same section, for the words "the last preceding section" the words "this section" shall be substituted.

Addition to
section 44.

7. To section 44 the following clause shall be added:—

(5) [Printed *ante*, p. 395.]

Amendment
of section 45.

8. In section 45, after the word "twelve" the words "and a half" shall be inserted.

Amendment
of section 46.

9. In section 46, clause (3), for the words "preceding section" the words "preceding clause" shall be substituted.

Amendment
of section 108.

10. In section 108, after the words "cesses under this Act," the words "not being interest levied in respect of public works cess," shall be inserted.

Amendment
of Schedule
A, Part I.

11. In the heading of column 3 of Part I, Schedule A, after the word "land," the words "if known," shall be inserted.

For the note which stands below Part I of the same Schedule the following note shall be substituted:—

[Printed *ante*, p. 418.]

Amendment
of Schedule
A, Part II.

12. In the heading of column 4 of Part II, Schedule A, after the word "occupied," the words "if known" shall be added.

Amendment¹
of Schedule C.

13. In the heading of column 7 of the form of return in Schedule C, for the word and figure "column 5" the word and figure "column 6" shall be substituted.

BENGAL ACT 3 OF 1881.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1881.]

CONTENTS.

PREAMBLE.

SECTION.

1. Construction.
(*Commencement.*) *Repealed.*
2. (*Repealed.*)
3. Amendment of sections 16 and 17 of Ben. Act 9 of 1879.
4. Amendment of section 23.
5. Amendment of sections 48 and 49.
6. Amendment of section 50.
7. Amendment of section 55.
8. Amendment of section 58.
9. New section introduced between sections 58 and 59.
10. New section substituted for repealed section 63.
11. New section introduced after section 65.

BENGAL ACT 3 OF 1881.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1881.][¹]

(25th May, 1881.)

An Act to amend the Court of Wards Act, 1879.[²]

Ben. Act. 9 of
1879.

Whereas it is expedient to amend the Court of Wards Act, 1879; [²] Preamble
It is enacted as follows:—

1. This Act shall be read and taken as part of the Court of the Construction.
Wards Act, 1879.

(Commencement). *Rep. by the Repealing and Amending Act,*
1897 (5 of 1897).

2. (Repeal). *Rep. by the Repealing and Amending Act, 1897 (5*
of 1897).

3. For sections 16 and 17 [³] of Bengal Act 9 of 1879 the following
section shall be substituted:—

Amendment
of sections 16
and 17 of
Ben. Act 9
of 1879.
Amendment
of section 23.

16. [Printed *ante*, p. 294.]

4. For section 23 of the same Act the following sections shall be
substituted, namely:—

23, 23A. [Printed *ante*, p. 295.]

5. The following sections shall be substituted for sections 48 and 49
of the same Act:—

Amendment
of sections 48
and 49

48, 49. [Printed *ante*, p. 303.]

6. In section 50 of the same Act, for the word “person” the word
“male” shall be substituted, and for the word and figures “section
49” the word and figures “section 48” shall be substituted.

Amendment
of section 50.

7. In section 55 of the same Act, after the words “shall be brought
on behalf of any ward,” the words “by a manager” shall be inserted.

Amendment
of section 5.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903),
Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,
1881, Pt. IV, p. 9, and for Proceedings in Council, see *ibid*, Supplement, pp. 143, 189,
243, 255 and 285.

LOCAL EXTENT.—Since this Act is (see section 1) to be “read and taken as part of”
Bengal Act 9 of 1879, its local extent is the same as that of the latter Act, as to which see
foot-note [⁴] on that Act, p. 287, *ante*.

[²] Printed *ante*, p. 287.

[³] So much of Bengal Act 3 of 1881 as related to s. 17 of the Court of Wards Act, 1879
(Ben. Act 9 of 1879), was repealed by s. 9 of the Government Management of Private
Estates Act, 1892 (10 of 1892), printed in General Acts, 1887-97, Ed. 1909, p. 356.

(Secs. 8-11.)

Amendment
of section 58.

8. To section 58 of the same Act the following words shall be added, namely:—

[Printed *ante*, p. 306.]

New section
introduced
between sec-
tions 58 and
59.

9. The following section shall be inserted between section 58 and section 59 of the same Act:—

58A. [Printed *ante*, p. 306.]

New section
substituted
for repealed
section 63.

10. Instead of the repealed section 63 of the same Act, the following section shall be read, namely:—

63. [Printed *ante*, p. 308.]

New section
introduced
after section
65.

11. After section 65 of the same Act, the following section shall be inserted, namely:—

65A. [Printed *ante*, p. 309.]

BENGAL ACT 2 OF 1882.

(THE BENGAL EMBANKMENT ACT, 1882.)

CONTENTS.

PART I.

PREAMBLE.

PRELIMINARY.

SECTION.

1. Short title.
Local extent.
(*Commencement.*) *Repealed.*
2. Repeal of former Acts.
3. Interpretation.
4. Public embankments, etc., to vest in Government.
5. Survey of lands hitherto used for obtaining earth for repairs.
6. Notification.

PART II.

POWERS OF COLLECTOR AND PROCEDURE THEREON; EMBANKMENT COMMITTEES.

7. Powers of Collector.
 - (1) Taking charge of embankment by Government.
 - (2) Removal of embankment or obstruction.
 - (3) Changing line of embankment.
 - (4) Improvement of drainage.
 - (5) Alteration of roads and construction of water-courses.
8. Form of notice.
9. Proclamation to be published for thirty days.
10. Hearing of objections to works.
11. Order after inquiry.
12. Order of Commissioner.
13. Order of Board.
14. Order of Lieutenant-Governor.
15. Special powers which may be conferred by Lieutenant-Governor.
16. (*Repealed.*)
17. Procedure of Collector.
Expenses of alteration or construction.
18. Application for new sluices, embankments or drainage.
19. Power to remove houses, etc.
20. Authority to take proceedings where lands likely to be affected by the works are in different districts.
21. Lieutenant-Governor may appoint Embankment Committee.
22. Consultation of Committee by Collector.
23. Business of Committee.
24. Reference to Commissioner.

PART III.

PROCEDURE IN CASES OF IMMINENT DANGER TO LIFE OR PROPERTY.

25. Proceedings in emergencies.

SECTION.

- 26. Restoration of embankments, etc.
- 27. Authority to take proceedings where lands in different districts.

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POWERS OF THE ENGINEER.

- 28. Engineer subject to control of Collector.
- 29. Power to Engineer to act in urgent cases.
- 30. Power to make repairs.
- 31. Power to make temporary roadway, water-course or dam.
- 32. Sluices to be opened or shut under authority of the Engineer.
- 33. Power to enter and survey land, etc.
 - Power to mark out line.
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 - Previous notice of entry.
 - Payment for damage.
- 34. Power to take earth from lands.
- 35. Procedure where crops on such lands.
- 36. Acquisition of land made permanently unfit for cultivation.

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ACQUISITION OF LANDS AND COMPENSATION.

- 37. Acquisition of land.
- 38. Compensation for consequential damage.
- 39. Limitation to claim for compensation.
- 40. Procedure for determining compensation.
- 41. Matters to be considered in determining compensation.
 - Matters not to be considered in determining compensation.

PART VI.

COST OF WORKS, PROCEEDINGS, ETC.

1.—Ascertainment thereof.

- 42. Embankments in Schedule D.
- 43. Exclusion from Schedule D.
 - Addition to Schedule D.
- 44. Contribution of public money towards the maintenance of the embankments in the *parganas* entered in Schedule E to be continued.
- 45. If such embankments are declared to be public. Collector to keep a separate account.
- 46. Contribution may be discontinued if it be found unnecessary for the public interest to maintain the embankments.
- 47. Estimates and specifications to be prepared.
- 48. Preparation of further estimates and specifications.
- 49. Estimates and specifications to be open to inspection.
- 50. Notice of receipt of estimates and specifications.
- 51. Preparation of accounts and Engineer's certificate of expenses.
- 52. Notices and inquiry into objections.
- 53. Total sum payable.
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2.—*Liability for the Costs, and Apportionment thereof.*

SECTION.

54. Parties liable to pay.
Proviso in respect of the *parganas* in Schedule E.
55. Recovery from under-tenants.
56. Notice to be given before apportionment.
57. Names of tenure-holders.
58. Apportionment amongst *zamindars*.
59. Apportionment amongst tenure-holders.
60. Provisions as to lands held without payment of rent not being estates.
61. Amount apportioned payable by instalments.
Interest.
62. Apportionment of further expenses.
63. Alternative power of apportioning estimated expenditure for a series of years.
64. Period included in the last section what to include.
65. Works in respect of which such estimate may be made.
Recovery of cost of new works.
66. Mode of apportionment.
67. Payment of sum apportioned.
68. Final order of apportionment.

3.—*Recovery thereof.*

69. Publication of final order of apportionment.
70. Recovery of sums apportioned.
71. Effect of opening separate account under Act 11 of 1859 or Ben. Act 7 of 1876.
72. Liability of estate for sum apportioned. *
73. Amount apportioned may be raised by leasing or mortgaging estate.
74. Recovery by *zamindars* and tenure-holders.

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PENALTIES.

75. Penalty for obstructing persons in exercise of powers conferred by Act.
76. Penalty for unauthorized interference with embankments or drainage.
Penalty for unauthorized interference with embankments or drainage in prohibited tract.
Penalty for abatement of such acts.
77. Penalties for injuring embankments, etc.
78. Penalties for diverting rivers or permitting cattle to graze on embankments, etc.
79. Obstructions to be removed and damage repaired.

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80. Mode of publishing proclamation and issuing notices.
81. Service of special notices.
82. Powers of Collector and Commissioner on inquiry and appeal.
83. No proceedings to be impeached for mistake or want of form.
84. Appeal from orders.
85. General control of Commissioner and Government. *
86. Orders to be final.
87. Disposal of lands no longer required for embankments.
88. Collector may delegate any of his powers to a Deputy Collector.
89. Jurisdiction.

SECTION.

- 90. Power to make, alter and cancel rules.
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SPECIAL PROVISIONS FOR THE PROVINCE OF ORISSA.

- 92. Powers conferred on Superintendent of Embankments in Orissa.
- 93. Power to Engineer to act in urgent cases.
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SCHEDULE I.
SCHEDULE II.
SCHEDULE III.

BENGAL ACT 2 OF 1882.

[THE BENGAL EMBANKMENT ACT, 1882.][¹]

(21st June, 1882.)

An Act to amend the law relating to Embankments and Water-courses.

Whereas it is expedient to make better provision for the construction, maintenance and management of embankments and water-courses in the territories subject to the Lieutenant-Governor of Bengal; [²] It is enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Bengal Embankment Act, 1882.

Short title.

It extends to the whole of the territories subject to the Lieutenant-Governor of Bengal, [²] except [*the Sundarbans, as defined under the provisions of clause 2, section 13, Regulation 3 of 1828 and*] the province of Orissa, save as otherwise expressly provided in Part IX.

Local extent.

(Commencement.) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. * * * [³] Bengal Act 6 of 1873 [⁴] (*to amend the law relating to embankments and water-courses*), with the exception of the sections set out and schedules specified in Schedule I to this Act annexed, shall be repealed.

Repeal of former Acts. †

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1882, Pt. IV, p. 12; and for Proceedings in Council, see *ibid*, Supplement, pages 46, 91, 303 and 329.

This Act extends to the whole of the former Province of Bengal except (the *Sundarban and*) “the Province of Orissa,” (see s. 1), but ss. 4 to 6, 25, 26, 34 and 35 extend to the latter Province—see Pt. IX, ss. 92 to 94, *post*.

It has been declared to be in force in the Sonthal Parganas, see Vol. IV, Pt. VI; but its application is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

FURTHER ENACTMENTS.—For another enactment relating to embankments (except in the Sunderbans), see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), *ante*, p. 155.

For enactments relating to embankments in the Sunderbans, see—

The Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code.

The Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), *ante*, p. 53.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[³] Formal words repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[⁴] The Bengal Embankment Act, 1873. It is printed *ante*, p. 155.

(Sec. 3.)

The references in the said sections, which are mentioned in Schedule II to this Act annexed, shall be read as if the references were made to the portions of this Act mentioned against such references respectively in the third column of such schedule.

Sections 80 and 81 of this Act shall be applicable respectively to the proclamation and notice mentioned in sections 26 and 28, Bengal Act 6 of 1873.^[1]

Interpreta-
tion.

3. The following words shall, for the purposes of this Act, have the meanings hereby declared, save where, from the context, a contrary intention appears:—

“Collector.”

“Collector” means any Revenue-officer in independent charge of a district or portion of a district, or specially appointed^[2] by the Lieutenant-Governor of Bengal^[3] to perform the functions of a Collector under this Act:

“District.”

“district” means the local area throughout which a Collector is authorized to exercise his ordinary functions:

“Embankment.”

“embankment” includes—

every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land;

every sluice, spur, groyne, training-wall or other work annexed to, or portion of, any such embankment;

every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters;

and also all buildings intended for purposes of inspection and supervision:

“Estate.”

“estate” means any land or share in land included under one entry on the general register of revenue-paying lands and of revenue-free land prepared and maintained by the Collector of a district under the Land Registration Act, 1876,^[4] or any similar law for the time being in force: Ben. Act 7 of 1876.

“Land.”

“land” includes interests in land and benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

“Public embankment.”

“public embankment” means an embankment maintained by the officers of Government:

[1] The Bengal Embankment Act, 1873. It is printed *ante*, p. 155.

[2] For an appointment made under this clause of s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[4] Printed *ante*, p. 235.

(Sec. 4.)

“public water-course” means a water-course under the charge of the officers of Government: “Public water-course.”

“section” means a section of this Act: “Section.”

“tenure” includes all interests in land which are held permanently at a fixed rental, or which are held rent-free, other than estates as above defined: “Tenure.”

“the Engineer” means the Engineer in charge of the public embankments of the district, or any part thereof, or any Engineer specially appointed^[1] by the Lieutenant-Governor of Bengal^[2] to perform the functions of an Engineer under this Act in respect of any tract of country or of any works: “The Engineer.”

“water-course” includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water: “Water-course.”

“*zamindar*” means all or any of the holders of an estate; and, where two or more *zamindars* are jointly holders thereof, they shall be jointly and severally liable under this Act. “*Zamindar*.”

Explanation.—For the purposes of Part VI the Government shall be deemed to be the *zamindar*—

- (a) of every estate of which the *zamindari* title is not vested elsewhere than in the Government;
- (b) of every estate which is let in farm or held *khas* under the provisions of s. 43 of Regulation 8 of 1793 ^[3] in consequence of the proprietor refusing or omitting to engage for the settlement thereof.

[4]4. Every public embankment and every public water-course, and all land, earth, pathways, gates, bermes and hedges belonging to, or forming part of, or standing on, any such embankment, or water-course and every embanked tow-path maintained by Government, shall vest in the Government. Public embankments, etc., to vest in Government.

The embankments mentioned in Schedule D ^[5] annexed to Bengal Act 6 of 1873 and every embankment and water-course which may be included in such Schedule under section 43 of this Act, and every embanked tow-path as aforesaid, shall be held on behalf of the Government; and all other public embankments and water-courses shall be held by Government on behalf of the persons interested in the lands to be protected or benefited by such embankments or water-courses, subject to the provisions of section 87; and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water-courses respectively.

[1] For lists of appointments made under this clause of s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] Now the Lieutenant-Governor in Council of Bihar and Orissa.

[3] The Bengal Decennial Settlement Regulation, 1793. It is printed in Vol. I of this Code.

[4] Sections 4 and 5 extend to the Division of Orissa, see s. 94, *post*.

[5] Printed *ante*, p. 155.

(Secs. 5-7.)

Survey of
lands hither-
to used for
obtaining
earth for
repairs.

[¹]5. All plots or parcels of land which, before the commencement of this Act, have been used for the purpose of obtaining earth or other materials for the repair of any public embankment, water-course or embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of the Government for such purpose, without payment of compensation for the use or removal of such earth or other materials.

The Collector may cause all such plots or parcels to be ascertained, surveyed and demarcated.

Notification.

[²]6. The Lieutenant-Governor may, from time to time, by a notification in the Calcutta Gazette declare[³] the limits of any tract within which the provisions of clause (b), section 76, shall take effect;

and the said provisions shall take effect one month after the publication of such notification.

As soon as possible after the said publication, the Collector shall cause a translation of the notification in the vernacular to be published in the manner prescribed in section 80.

PART II.

POWERS OF COLLECTOR AND PROCEDURE THEREON; EMBANKMENT COMMITTEES.

Powers of
Collector.

7. Subject to the provisions of Part III, whenever it shall appear to the Collector that any of the following acts should be done, or works executed, that is to say:

Taking charge
of embank-
ment by
Government.

(1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, should be taken charge of and maintained by the officers of Government;

Removal of
embankment
or obstruc-
tion.

(2) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with the general drainag  or the flood drainage of any tract of land, should be removed or altered;

Changing line
of embank-
ment.

(3) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that

[¹] Sections 4 and 5 extend to the Division of Orissa, *see* s. 94, *post*.

[²] Section 6 extends to the Division of Orissa—*see* s. 94, *post*.

[³] For a list of declarations made under s. 6, *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 8-11.)

a new embankment should be constructed instead of any public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;

(4) that any sluice or water-course should be made, or that any public water-course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;

Improvement
of drainage.

(5) that any road which interferes with the drainage of any tract of land should be altered, or that any water-course under or through such road should be constructed;

Alteration of
roads and
construction
of water-
courses.

he shall cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the rules for the time being in force under this Act, or as may be especially ordered by the Lieutenant-Governor together with such plans and specifications of the same as may be required. He shall also cause to be prepared from the survey map of the district a map showing the boundaries of the lands likely to be affected by the said acts and works, and he shall cause a general notice to be given of his intention to cause such works to be executed.

8. Such general notice shall as far as possible be in the form, and state the particulars mentioned, in Schedule III to this Act annexed; and to it shall be annexed a list of all estates and villages, as far as is known, which are likely to be affected by the proposed work, and to be chargeable in respect of the expenses of executing the same; and a copy of the said estimates, specifications and plans, together with a copy of the map as aforesaid, shall be deposited in the office of the Collector, and shall be open to the inspection of any person interested, who shall be allowed to take copies thereof.

Form of
notice.

9. Every such general notice shall be published in the manner provided by section 80 not less than 30 days before the day appointed for hearing the persons interested.

Proclamation
to be publish-
ed for thirty
days.

10. The Collector shall, on the day appointed for the hearing, or on any subsequent day to which the hearing may be adjourned, hold an inquiry and hear the objections of any persons who may appear, recording such evidence as he may deem necessary.

Hearing of
objections to
works.

11. After holding such inquiry the Collector shall proceed as follows, that is to say:—

Order after
inquiry.

(a) if he considers that the proposed act or work, or any modification of the same, should not be done or executed, he shall record his opinion to that effect;

(Secs. 12-16.)

(b) if he considers that the proposed act or work, or any modification of it, should be done or executed, he shall submit a report to the Commissioner of the Division.

Order of
Commis-
sioner.

12. On receipt of a report submitted under section 11, the Commissioner, after making any further inquiry which he may deem necessary, may record an order refusing to support the proposal made in the report of such Collector for the execution of such work;

or may forward the report submitted by such Collector, together with any remarks he may think proper, for the consideration of the Board of Revenue.^[1]

Order of
Board.

13. On receipt of the report forwarded by the Commissioner, the Board of Revenue,^[1] after making any further inquiry which they may deem necessary, may record an order refusing to support the proposal made in the report of such Collector or Commissioner,

or may submit such report, together with any remarks which may be thought proper, for the consideration of the Lieutenant-Governor.

Order of
Lieutenant-
Governor.

14. On receipt of such report from the Board^[1] the Lieutenant-Governor shall proceed to consider the same, and may order^[2] that the proposed act or the proposed work, or any modification thereof, be done or executed.

Every such order shall be notified in the Calcutta Gazette.

Special
powers
which may be
conferred by
Lieutenant-
Governor.

15. Notwithstanding anything contained in this Part, the Lieutenant-Governor may by a special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorize the Collector, after holding such inquiry as is prescribed in section 10, without previous reference to any superior authority, to pass an order that such act or work or any modification thereof may be done or executed; or the Lieutenant-Governor may authorize the Commissioner or the Board of Revenue^[1] to pass such order without previous reference to any superior authority.

Provided that every order passed under the authorization of the Lieutenant-Governor, given under this section, shall be subject to the provisions of section 85.

16. (*Alteration of railroads and construction of water-courses.*)
Rep. by the Indian Railways Act, 1890 (9 of 1890).

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[2] For lists of orders made under s. 14, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 17-18.)

17. Whenever an order shall have been passed in cases falling under section 7, clause (5), [1]* * *, directing that any road[2] * * * which interferes with the drainage of any tract of land be altered, or that any water-course be constructed under or through such road [2] * * the Collector may require the person in charge of such road [2] * * to make such alteration or construct such water-course, and in the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the Collector may cause the road[2] * * to be altered or the water-course to be constructed by the officers of Government.

Procedure of
Collector.

* * * * *

*[3]

The expenses of such alteration or construction shall be borne by the person in charge of the said road[2] * *, so far as the same shall have been incurred on account of insufficient provision having been made at the time of the construction of the said road[2] * * for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from, the proprietors of the lands benefited in accordance with the provisions of this Act. If any dispute arises as to the apportionment of expenses under this clause between the person in charge of a road[2] * * and the proprietors of the lands benefited, the dispute shall be decided by the Lieutenant-Governor, whose decision shall be final.

Expenses of
alteration or
construction.

18. (a) If any person desires that a sluice be made in any public embankment for the purpose of drainage or irrigation,

Application
for new
sluices,
embankments
or drainage.

(b) or, if within any tract of country which has been included within a notification under section 6, any person desires that any new embankment be erected, that any existing embankment be lengthened, enlarged, repaired or removed, or that the line of any embankment be altered, or that any new water-course be made, or that any water-course be obstructed or diverted,

he may make an application in writing to the Collector.

[1] The words "or under the section last preceding," in s. 17, were repealed by the Indian Railways Act, 1890 (9 of 1890), and are omitted.

[2] The words "or railroad," in s. 17, were repealed by the Indian Railways Act, 1890 (9 of 1890), and are omitted.

[3] The proviso to the first paragraph of s. 17 was repealed by the Indian Railways Act, 1890 (9 of 1890), and is omitted. It ran as follows:—

"Provided that in the case of a railroad no such work shall be undertaken by the officers of Government without the permission of the Lieutenant-Governor previously obtained."

(Secs. 19-21.)

The application shall contain such particulars of the land likely to be affected by the work as may enable the Collector to judge of the advantage which may be derived from the project.

If it should appear to the Collector that the work applied for is one which may probably be executed with advantage, the procedure mentioned in the 7th and following sections of this Act shall be followed in respect of the proposed work.

Power to remove houses, etc.

19. Whenever the Collector, after considering any report of the Engineer or otherwise, shall be of opinion that the removal of any trees, houses, huts or other buildings, situated between a public embankment and the river, is necessary,³

or that land is required for widening an existing embanked tow-path, or for constructing a new embanked tow-path,

he shall^[1] make a report to that effect to the Commissioner, accompanied by a detailed statement of the trees, huts or other buildings to be removed, or of the land required.

Such report shall be submitted in the usual manner through the Board of Revenue^[2] to the Lieutenant-Governor, in order that proceedings may be taken for obtaining possession of such trees, houses, huts and buildings or land in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law^[3] for the time being in force for the acquisition of land for public purposes.

Authority to take proceedings where lands likely to be affected by the works are in different districts.

20. If any works proposed to be undertaken in accordance with this Act, or the lands which are likely to be affected by such works, are situated within the limits of different districts, the Collector of any district within which any portion of such works or lands is situated may apply to the Commissioner of the division for authority to proceed in such matter; and the Commissioner of the division, with the concurrence of any other Commissioner within whose division any such lands are situated, may give authority to such Collector, or to any other Collector within whose district any portion of such lands is situated, to carry out all or any proceedings under this Act in respect of all the lands affected by such works.

Lieutenant-Governor may appoint Embankment Committee.

21. The Lieutenant-Governor may, if he think fit, appoint^[4] an Embankment Committee for any district; and may from time to time

[¹] For special power to remove trees, houses, huts or buildings, in cases of grave and imminent danger to life or property, see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), s. 21, proviso, *ante*, p. 155.

[²] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

[³] See now the Land Acquisition Act, 1894 (1 of 1894, printed in General Acts, 1887-97, Ed. 1909, p. 363), which repeals and re-enacts Act 10 of 1870.

[⁴] For a list of appointments, directions and rules made under ss. 21, 22 and 23, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 22-26.)

appoint and accept the resignation of the members of such Committee, and direct that any person shall cease to be a member thereof.

22. The Lieutenant-Governor may from time to time direct that any such Committee shall be consulted by the Collector in the discharge of any function or the performance of any duty imposed on him by this Act; and by a notification published in the Calcutta Gazette may from time to time direct^[1] that any such function or duty shall be performed or discharged by such Committee.

Consultation
of Committee
by Collector.

23. The business of every such Committee shall be conducted under such rules^[1] as the Lieutenant-Governor may from time to time make in that behalf.

Business of
Committee.

24. Whenever, in any matter on which the Lieutenant-Governor has directed that the Collector shall consult the Committee, the Collector may differ from the Committee, he shall, if so required by the Committee, submit the question to the Commissioner of the division for decision, with copies of any remarks which may have been recorded by the Committee or any members thereof.

Reference to
Commis-
sioner

[²]PART III.

PROCEDURE IN CASES OF IMMINENT DANGER TO LIFE OR PROPERTY.

25. Whenever the Collector^[3] shall be of opinion that the delay in the execution of any work occasioned by proceedings commenced by a general notice under the 7th and following sections of this Act^[4] would be attended with grave and imminent danger to life or property, he may forthwith cause the execution of such work to be begun in anticipation of the completion of such proceedings:

Proceedings
in emergen-
cies.

Provided that he shall without delay cause to be prepared the estimates, specifications and plans of the proposed works, together with a copy of the map as provided in section 7, and shall cause general notice to be given that the work mentioned therein has already been commenced; and thereupon such proceedings and inquiries shall be had as in and by Part II of this Act are directed.

26. Whenever it may have been determined in the final order to be passed on any such inquiry that anything done by the Collector or by the

Restoration
of embank-
ments, etc.

[¹] For a list of appointments, directions and rules made under ss. 21, 22 and 23, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] As to the issue of a proclamation when land has been taken or used under Pt. III, see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), s. 26, *ante*, p. 155.

[³] As to the extension of the powers of the Collector under s. 25 by the Superintendent of Embankments or the Engineer in the Division of Orissa, see ss. 92 and 93, *post*.

[⁴] In the Division of Orissa, all references in s. 25 to other parts of this Act are to be deemed to be references to the corresponding portions of the Bengal Embankment Act, 1885 (32 of 1885),—see s. 92, *post*, Act 32 of 1885, is printed in Vol. I of this Code.

(Secs. 27-31.)

Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from the Government to be assessed according to the provisions contained in Part V of this Act; and, on receipt of any application to that effect by the Collector from any such person affected, the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have been unnecessary, be, at the expense of the Government, restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this Part.

Authority to
take proceed-
ings where
lands in
different
districts.

27. If any portion of the land likely to be affected by any work to be undertaken under this Part lies within another district, the Collector who causes the work to be executed shall, when commencing upon it, give notice of the same to the Collector of such other district; and the provisions of section 20 shall be applicable to all proceedings connected with the work and the cost thereof.

PART IV.

POWERS OF THE ENGINEER.

Engineer
subject to
control of
Collector.

28. The powers conferred on the Engineer under this Act shall be exercised subject to the general control and orders of the Collector.

Power to
Engineer to
act in urgent
cases.

29. In cases in which the Engineer may be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the Collector by section 25.

The Engineer shall forthwith report to the Collector any action taken by him under this section and shall be guided by any instructions which he may receive from the Collector in respect thereof.

Power to
make
repairs.

30. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public embankment, public water-course or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.

Power to
make
temporary
roadway,
water-course
or dam.

31. Whenever any person desires that a temporary roadway should be made over, or that a temporary water-course should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public water-course, he shall apply to the Engineer, or to any person who has been appointed in that behalf by the Engineer.

(Secs. 32-33.)

Such Engineer or person shall communicate the application with his opinion to the Collector, and shall await the Collector's order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same without waiting for the orders of the Collector.

If the proposed work is to be executed by an officer of Government, the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such roadway, or of, and incidental to, making, closing or removing such water-course or dam.

If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

32. Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the Engineer or of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer. Sluices to be opened or shut under authority of the Engineer

33. It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act,— Power to enter and survey land, etc.

to enter upon, and survey, and take levels of any land :

to dig or bore into the sub-soil ;

to do all other acts necessary to ascertain whether the land is adapted to the purpose projected by such Engineer or by the Collector ;

to set out the boundaries of the land proposed to be taken, and the intended line of the work proposed to be made thereon ; Power to mark out line.

to mark such levels, boundaries and line, by placing marks and cutting trenches ;

and, where otherwise the survey cannot be completed or the levels taken, to cut down and clear away any part of any standing crop, fence or jungle : Power to clear land.

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so. Previous notice of entry.

The Engineer or other person so authorized shall at the time of such entry tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final. Payment for damage.

(Secs. 34-38.)

Power to
take earth
from lands.

[¹]34. Whenever it is deemed requisite to repair any embankment or water-course, or embanked tow-path maintained by Government, it shall be lawful for the Engineer, or any person authorized in that behalf, to enter in and upon the lands mentioned in section 5, and take possession of, appropriate and remove any earth or other material therefrom, and use the same for the purposes of such repairs.

Procedure
where crops
on such lands.

35. The Collector shall proceed in respect of any crops standing on such land as provided in section 13,[²] Bengal Act 6 of 1873; and the provisions of that section shall be applicable to claims for the payment of compensation for damage done to such crops.

Acquisition of
land made
permanently
unfit for
cultivation.

36. When any such land is rendered permanently unfit for cultivation by any such act as aforesaid, the Local Government shall, upon application for that purpose made by the owner thereof, acquire such lands under the provisions of the Land Acquisition Act, 1870, or other law[³] for the time being in force for the acquisition of land for public purposes.

[⁴]PART V.

ACQUISITION OF LANDS AND COMPENSATION.

Acquisition
of land.

37. Whenever, in the course of proceedings under this Act, save in those cases in which the Collector has proceeded under the provisions of sections 12 and 13,[⁵] Bengal Act 6 of 1873, it appears that land is required for any of the purposes thereof proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law[⁶] for the time being in force for the acquisition of lands for public purposes.

Compensa-
tion for
consequen-
tial damage.

38. Subject to the provisions of section 5, whenever any land other than land required or taken by the Engineer, or any right of fishery, right of drainage, right of the use of water, or other right or property, shall have been injuriously affected by any act done or any work executed under the due exercise of the powers or provisions of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Collector for compensation :

[¹] Section 34 extends to the Division of Orissa—see s. 94, *post*.

[²] Printed *ante*, p. 467.

[³] See now the Land Acquisition Act, 1894 (1 of 1894, printed in General Acts, 1887-97, Ed. 1909, p. 363), which repeals and re-enacts Act 10 of 1870.

[⁴] As to the application of Part V when a proclamation has been issued under Part III, see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), s. 26, *ante*, p. 155.

[⁵] Printed *ante*, p. 155.

[⁶] See now the Land Acquisition Act, 1894 (1 of 1894, printed in General Acts, 1887-97, Ed. 1909, p. 363), which repeals and re-enacts Act 10 of 1870.

(Secs. 39-41.)

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

39. No claim under the last preceding section shall be entertained which shall be made later than two years next after the completion of the work by which such right is injuriously affected. Limitation to claim for compensation.

40. When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible, in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law[¹] for the time being in force for the acquisition of land for public purposes. Procedure for determining compensation.

41. In any such case which is referred to the Judge and assessors for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Judge and assessors shall take into consideration— Matters to be considered in determining compensation.

First, the market-value of the property or right injuriously affected at the time when the act was done or the work executed;

Secondly, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right;

Thirdly, the consequent diminution of the market-value of the property or right injuriously affected when the act was done or the work executed;

Fourthly, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed, or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person.

But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the act or work being done or executed; Matters not to be considered in determining compensation.

Secondly, any damage sustained by the claimant, which, if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

[¹] See now the Land Acquisition Act, 1894 (1 of 1894, printed in General Acts, 1887-97, Ed. 1909, p. 363), which repeals and re-enacts Act 10 of 1870.

(Secs. 42-44.)

PART VI.

COST OF WORKS, PROCEEDINGS, ETC.

1.—*Ascertainment thereof.*

Embankments in Schedule D.

42. The provisions of section 47 and the following sections in this Part contained shall not apply to any of the embankments mentioned in Schedule D^[1] to Bengal Act 6 of 1873 annexed, or which may be hereafter included therein, save so far as any works or repairs are executed therein or in relation thereto under the provisions of section 18 or of section 31; or to any of such embankments as may hereafter be erected for the protection of lands which at the commencement of this Act are protected by the embankments mentioned in the aforesaid Schedule, save so far as the erection of such embankments may protect lands not protected by the embankments mentioned in the aforesaid Schedule.

All sums payable in respect of any works or repairs executed in or in relation to the embankments mentioned in the aforesaid Schedule, except under the provisions of section 18 or of section 31, shall be paid by the Government.

Exclusion from Schedule D.

43. If at any time after the commencement of this Act, on inquiry made by the Collector as far as possible in accordance with the provisions of Part II of this Act, it shall be found that it is unnecessary for the public interests to retain any embankment mentioned in the said Schedule D,^[1] or any embankment or water-course which may have been included in the said Schedule D^[1] under the clause next following of this section, the Lieutenant-Governor may direct^[2] that the same shall be no longer included in the said Schedule:

Provided that the Lieutenant-Governor may restore^[2] the same to the said Schedule if on any subsequent inquiry similarly conducted it shall appear to the Lieutenant-Governor that it is necessary so to do.

Addition to Schedule D.

The Lieutenant-Governor may, at any time after the passing of this Act, by a notification published in the Calcutta Gazette, direct^[2] that any embankment not mentioned in the said Schedule D^[1] or any water-course, be included therein and the provisions of this section shall apply to such embankment or water-course.

Contribution of public money towards the

44. In accordance with the custom heretofore in force in respect of the *parganas* entered in Schedule E^[3] annexed to Bengal Act 6 of 1873,.

^[1] Printed *ante*, p. 155.^[2] For lists of orders made under s. 43, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.^[3] Printed *ante*, p. 155.

(Secs. 45-48.)

the Government shall continue to contribute annually the sum noted therein for each *pargana* respectively towards the maintenance of the embankments thereof.

maintenance of the embankments in the *parganas* entered in Schedule E to be continued.

45. If the embankments maintained in either of the said *parganas* shall at any time be declared to be public embankments under the provisions of section 7, the Collector shall, from the date of such declaration, keep a separate account for such *parganas*, in which the aforesaid sum shall be credited at the commencement of each financial year.

If such embankments are declared to be public, Collector to keep a separate account.

The unexpended balance at the close of each year shall be carried on to the credit of the account in the next succeeding year, and shall be available for the cost of repairing or erecting all the embankments which it may be deemed necessary to maintain in such *pargana*.

46. If at any time^[1] on an inquiry made by the Collector as far as possible in accordance with the provisions of Part II, it shall be found that it is unnecessary for the public interests to retain any embankment in either of the said *parganas*, the Lieutenant-Governor may direct that such contribution shall cease in respect of such *pargana*:

Contribution may be discontinued if it be found unnecessary for the public interest to maintain the embankments.

Provided that such contribution shall again be made in accordance with the provisions hereinbefore contained, if it shall appear to the Lieutenant-Governor on the report of an inquiry similarly conducted, that the maintenance of any embankment in such *pargana* has again become necessary for the public interest.

47. Subject to the provisions of Part III of this Act, before the Collector or the Engineer undertakes, under the provisions of this Act, the execution of any repairs or of any work other than any new work of which the estimates, specifications and plans have been prepared and deposited in the Collector's office for public inspection as provided in section 7, specifications and estimates of the expenses to be incurred in respect of the repairs or works, including such proportion of establishment charges as the Lieutenant-Governor shall direct, shall be prepared by the Engineer.

Estimates and specifications to be prepared.

48. Whenever it appears that the actual expenses to be incurred in respect of any work will exceed by one-tenth any estimates of such work which may have been transmitted to the office of the Collector under the next succeeding section, the Engineer shall forthwith prepare further estimates, and, if necessary, further specifications.

Preparation of further estimates and specifications.

[¹] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

(Secs. 49-52.)

Estimates and specifications to be open to inspection.

49. Copies of all specifications and estimates prepared under the two last preceding sections shall be transmitted to the office of the Collector, together with vernacular translations thereof, or such abstracts thereof as the Lieutenant-Governor may from time to time direct, and may be examined by any person interested in such works and repairs.

Notice of receipt of estimates and specifications.

50. A general notice of the receipt of any such specifications and estimates shall be published in the manner prescribed in section 80, and in such general notice shall be specified all estates chargeable for, or likely to be affected by, the said works or repairs. Special notices shall also be served in respect of every estate in which the area liable to the assessment of the apportioned charge is likely to exceed one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate chargeable for, or likely to be affected by, the said works and repairs. Should any objection in regard to such specifications and estimates be preferred by any such person within a period of one month from the date of service of such notice, the Collector shall pass such orders as may appear to him reasonable and proper.

Preparation of accounts and Engineer's certificate of expenses.

51. The accounts of the actual expense incurred in executing any works or repairs, or of any portion of the actual expenses with which the Collector may determine to deal separately under this and the following sections, shall be prepared as soon as possible after the completion thereof.

The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified, or any parts of them, are affected.

Any such certificate may be amended at any time before the Collector has made an order charging or apportioning the amount under section 58.

On receipt of such certificate or amended certificate, the Collector shall cause a statement to be prepared of the villages of which any lands are benefited or protected by such works and repairs, and of the estates to which they belong, and, except as otherwise in this Act provided, the *zamindars* of such estates and villages shall be liable to pay the said amount.

Copies of the said accounts, certificates and statements shall be deposited in the office of the Collector, and may there be examined by any person interested.

Notices and inquiry into objections.

52. General notice of the receipt and deposit of such accounts, certificates and statements in the office of the Collector shall be given.

(Secs. 53-54.)

Special notices thereof shall also be served in respect of every estate in which the area liable to assessment of the apportioned charges exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the *zamindars* or tenure-holders of which any sum is charged or apportioned; and if, within one month of such general notice being given, or of such special notice (if any) being served on him, any interested person shall object to the accounts on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than those mentioned in the estimates, the Collector shall inquire into such objection, and pass orders thereon.

53. The Collector shall add to the amount appearing in the said certificate all sums which have been paid or have become payable in respect of the said works and repairs, whether as compensation, costs and expenses under, and incidental to, any proceedings taken or directed to be taken under Part II or Part V of this Act, or under sections 26 to 29^[1] of Bengal Act 6 of 1873, as cost of making of surveys and plans, as cost of preparing the estimates, accounts, certificates and statements, as cost of the issuing and service of notices up to date, or on any other account, and shall then make an order specifying the total sum found payable, and in respect of works done under section 17 and section 31 the persons by whom, or in respect of other works, the estates in respect of which, the same is payable to him. If the order is made in respect of work done under section 17 or section 31, the same shall forthwith be served upon the party or parties liable to pay; otherwise the Collector shall proceed under the provisions in the next Chapter contained.

Interest may be charged upon any sum paid as compensation from the date of payment thereof at five *per centum*, or at such rate, not exceeding five *per centum per annum*, as the Lieutenant-Governor may from time to time determine.

2.—*Liability for the Costs, and Apportionment thereof.*

54. The total sum aforesaid, save so far as is otherwise provided in this Act, shall be paid to the Collector by the *zamindars* of the estates in which are situated the lands benefited or protected by the repairs or works executed:

Provided that the sum standing to the credit of a *pargana* in Schedule E^[2] to Bengal Act 6 of 1873 annexed in the account kept by the

[¹] Printed *ante*, p. 156.

[²] Printed *ante*, p. 158.

Total sum
payable.

Parties liable
to pay.

Proviso in
respect of the
pargana in
Schedule E.

(Secs. 55-58.)

Collector, at the time when the total amount payable is fixed under the provisions of section 53, shall be deducted from the total amount payable in respect of such portion of any embankment as is situated in such *pargana*, and that the *zamindars* of the estates situated in such *pargana* shall be charged only with the balance of the amount (if any) which may remain payable.

Recovery
from under
tenants.

55. Every *zamindar*, who is liable under the last preceding section for the payment of the whole or a portion of such total sum, shall be entitled to recover from the holder of every tenure held immediately under him, and from the holder of any land which is declared under the provisions of section 60 to form part of his estate, the sum apportioned to such tenure or land by the Collector under the provisions of section 59.

And, similarly, every tenure-holder shall be entitled to recover from the holder of any tenure subordinate to his own, and from the holder of any land declared under section 60 to form part of his tenure, the sum apportioned to such subordinate tenure or land by the Collector, under the said provisions.

Notice to be
given before
apportion-
ment.

56. So soon as the total sum payable as aforesaid has been ascertained, the Collector shall cause general notice to be given specifying the estates in respect of which any portion of such total sum will be chargeable, and special notices to be served in respect of every estate in which the area chargeable exceeds one hundred acres; or, instead of causing a general notice to be published the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the *zamindars* or tenure-holders of which any sum is charged or apportioned.

Such notices shall make it known that an inquiry will be held at a day and place therein named for the purpose of apportioning amongst the *zamindars* and tenure-holders the said total sum, with interest and the costs of apportionment.

Names of
tenure-
holders.

57. In any such inquiry the Collector shall take down in writing the names of all persons who may claim, or who may be alleged by any party interested to be holders of tenures within any of the estates mentioned in such notice. In default of appearance of any such person, the Collector shall issue and serve a notice calling on him to appear at a date and place therein mentioned, and to show cause against being included in the order of apportionment to be made therein, and shall adjourn the inquiry till such date.

Apportion-
ment amongst
amindars.

58. At such or any subsequently adjourned inquiry, the Collector, if there be only one estate liable, shall charge the *zamindar* thereof with

(Secs. 59-60.)

the total amount payable; and if there be two or more estates, he shall apportion the same amongst the *zamindars* thereof, either—

- (a) rateably in proportion to the respective benefits derived by such estates from such works or repairs; or
- (b) in proportion to the areas of the lands benefited or protected thereby, and comprised within such estates respectively; or
- (c) with the sanction of the Local Government, in proportion to the amount of revenue payable for such estates respectively:

Provided that the said total amount payable in respect of the embankments on the right bank of the river Gandak shall be chargeable, in accordance with the custom in force for such estates, to the *zamindars* of all the estates situated in the district of Saran, in proportion to the amount of revenue respectively payable for such estates:

Provided also that the total amounts which may have been expended by the Government before the commencement of this Act, and the total amounts which may become payable in accordance with the provisions of this Act, on account of any year in respect of the embankments on the left bank of the river Gandak in the district of Muzuffarpur, shall be chargeable, and shall be deemed always to have been chargeable, in accordance with the custom hitherto in force in respect of such embankments; that is to say, chargeable to the *zamindars* of all the estates situated in the following *parganas*, *viz.*, Rati, Gadasand, Hajipur, Bhatsala, Garjaol, Nae, Saresa and Balagach, in proportion to the amounts of land-revenue payable for such estates respectively, but so that the amount out of any total sum apportioned in respect of each estate in Rati, Gadasand and Hajipur, shall bear such a proportion to the land-revenue payable for such estate as shall be twice as great as the proportion which the amount apportioned in respect of each estate in the remaining *parganas* shall bear to the land-revenue payable for such estate.

59. The Collector shall, in like manner, except in respect of the said embankments on the right bank and left bank of the river Gandak, charge or apportion the amount payable in respect of each estate upon or amongst the holders of the tenures therein rateably in the proportion of benefit so received or of area so benefited or protected, first deducting therefrom such sum as, on the like principle of proportion, is payable in respect of such portion of the estate as is not included within any tenure.

60. All lands held without payment of rent, not being estates, may, for the purposes of this Act, be deemed to form part of any estate or of any tenure within the local boundaries of which they are included; and

Apportionment
amongst
tenure-
holders.

Provisions as
to lands held
without pay-
ment of rent

(Secs. 61-63.)

not being
estates.

if they are not included within the local boundaries of any estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal and signature, declare.

Amount
apportioned
payable by
instalments.

61. The amount charged to or apportioned on any estate or tenure shall be payable in equal instalments on such days as the Lieutenant-Governor shall direct^[1]: Provided that no instalment shall exceed four annas for every acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year.

Interest.

Interest shall be charged on the unpaid portion of the said amount from the date of apportionment until payment thereof at five *per centum* or at such rate, not exceeding five *per centum per annum* as the Lieutenant-Governor may from time to time determine.

Apportion-
ment of fur-
ther ex-
penses.

62. If after the apportionment of the expenses of any works and repairs as above prescribed any expenses not included in such apportionment shall be found to have been paid or to have become payable on account of the said works or repairs, whether as compensation or otherwise, the Collector may proceed to apportion such further expenses in the manner in this Part provided.

Alternative
power of
apportioning
estimated
expenditure
for a series of
years.

63. Instead of the procedure prescribed above for charging upon, and recovering from, *zamindars*, the expenses actually incurred in the repairs and maintenance of public embankments and water-courses and the works connected therewith, the Lieutenant-Governor may by an order to be published in the Calcutta Gazette, direct that an estimate be made of the expenses to be incurred in respect of such repairs, maintenance and works during any number of years, not exceeding thirty, which he may think fit;

and may by a subsequent order^[2] fix the total sum payable during such number of years by the *zamindars* of the estates benefited by such repairs, maintenance and works:

Provided that no order fixing such total sum shall be passed by the Lieutenant-Governor until three months after the amount of such estimate shall have been published in the Calcutta Gazette, and by a general notice calling on all persons interested to prefer to the Collector any objections they may think proper against such amount being fixed as the total sum. Every such objection shall be submitted to the Lieutenant-Governor for his consideration.

[¹] For lists of orders made under paragraph 1 of s. 61, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] For a list of orders made under this paragraph of s. 63, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 64-67.)

64. The period fixed in any order under the section last preceding may include also years previous to the commencement of this Act: Period included in the last section, what to include.

Provided that in such case the total sum mentioned in the said section shall be calculated by adding the amounts actually expended before the making of such order to the estimate of expenses to be incurred during the rest of the period included in such orders.

65. The total sum mentioned in section 63 or in section 64 may be made recoverable in respect of the expenses of repairs and maintenance, and the expenses of works connected with the repairs and maintenance— Works in respect of which such estimate may be made.

- (a) of any protective works which may be specified in such orders;
- (b) of all the public embankments and water-courses in any district; or
- (c) of all the public embankments and water-courses within any tract of country specified in the order of the Lieutenant-Governor and any such tract may contain the whole or portions of any one or more districts;

and no further sum shall be recoverable during such period in respect of the expenses of such repairs, maintenance and works connected therewith save so far as any such works or repairs are executed under the provisions of section 18 or of section 31.

But such total sum shall not include the expenses of executing any new works which may be undertaken under the provisions of this Act within any district or tract as aforesaid.

Whenever the Lieutenant-Governor shall declare that any work executed or to be executed within such district or tract is a new work within the meaning of this section, the cost of executing such work and of maintaining the same shall be payable by the *zamindars* to the Collector under the provisions of this Act, in addition to any total sum fixed under section 63 or section 64 as payable by them. Recovery of cost of new works.

66. On publication of any order of the Lieutenant-Governor under section 63, the Collector shall proceed to charge or apportion the said total sum upon or among the *zamindars* and except in respect of the embankments on the right and left banks of the river Gandak as provided in section 58 among tenure-holders who are liable to pay the same, as above provided. Mode of apportionment.

67. The sum so apportioned in respect of any estate or tenure on account of any such period as is mentioned in section 63 shall be payable in equal portions in each of the years included in such period, and each such portion if unpaid shall carry interest at five *per centum*, or at such rate, not exceeding five *per centum per annum*, as the Lieutenant- Payment of sum apportioned.

(Secs. 68-71.)

Governor may from time to time determine, from the end of the year in which it is payable.

Final order
of apportion-
ment.

68. On the completion of any charge or apportionment under this Act, the Collector shall make an order specifying the estates and tenures in respect of which any sum charged or apportioned is payable, and the sums payable in respect of each of the instalments of such sums, and the dates on which such sums are payable.

3.—*Recovery thereof.*

Publication
of final order
of apportion-
ment.

69. As soon as may be after any final order of apportionment is made, as provided in the section last perceding, the Collector shall cause copy of such order to be published with a general notice stating that the amounts apportioned on the *zamindars* in respect of estates are payable to the Collector, and the amounts apportioned on the tenure-holders in respect of tenures are payable to the *zamindars* or superior tenure-holders. Instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the *zamindars* or tenure-holders of which any sum is charged or apportioned.

Recovery
of sums
apportioned.

70. If any such sum payable to the Collector, or any instalment thereof, be not pursuant to the said order, paid, the same with interest may be recovered as arrears of a demand under the provisions of the Public Demands Recovery Act, 1880, or any similar Act^[1] for the time being in force.

Ben. Act 7 of
1880.

Effect of
opening
separate
account
under
Act 11 of
1859 or Ben.
Act 7 of
1876.

71. When a recorded sharer of a joint revenue-paying estate has opened a separate account under Act 11 of 1859,^[2] or under section 70 of Bengal Act 7 of 1876^[3] or any similar law for the time being in force for the regulation of the opening and maintaining of such separate accounts, he shall be entitled, in regard to the payment and realization of all sums due under this Act, to all the advantages of separate liability enjoyed by him under the said Act 11 of 1859, ^[4] and Bengal Act 7 of 1876,^[3] respectively, in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of a separate notice in every case in which special notice is, by this Act, required to be served, from the date on which such advantages shall take effect in respect of the demand of Government revenue.

^[1] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code. See also s. 72 on next page.

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[3] The Land Registration Act, 1876, *ante*, p. 235.

^[4] The Bengal Land-revenue Sales Act, 1859, in Vol. I of this Code.

(Secs. 72-74.)

Similar privileges shall attach to every recorded holder of a revenue-free estate who has opened a separate account under section 46 of Bengal Act 9 of 1880^[1] in respect of the amount of cesses payable by him.

72. Notwithstanding anything contained in section 70, any such sum shall be a first charge on the estate in respect of which it is apportioned, and shall be deemed to be a demand debited to the estate in the public accounts of the district within the meaning of section 31 of Act 11 of 1859,^[2] and such charge shall not be avoided by any sale, nor shall the joint liability of the entire estate for such sum be affected by any partition of the said estate which may subsequently take place.

73. If the Collector thinks it inexpedient to proceed for the recovery of such sum or any part thereof under the provisions of section 70, or having so proceeded shall have failed to realize the sum due, he may, with the sanction of the Board of Revenue,^[3] raise the amount necessary to discharge the sum or instalment remaining unpaid—

- (a) by mortgaging the whole or any part of such estate;
- (b) by letting in farm or managing by himself or another the whole or any part of such estate;
- (c) partly by one of such modes and partly by another or others of them.

For the purposes of this section the Collector may exercise all the powers of the owner of such estate, and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

74. Every *zamindar* or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of *patni* tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2 and 3 of section 17 of Regulation 8 of 1819,^[4] as amended by Bengal Act 8 of 1865,^[5] or by the provisions of any similar Act for the time being in force:

Provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

^[1] The Cess Act, 1880, *ante*, p. 373.

^[2] The Bengal Land-revenue Sales Act, 1859, in Vol. I of this Code.

^[3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913).

^[4] The Bengal Patni Taluks Regulation, 1819, in Vol. I of this Code.

^[5] The Bengal Rent Recovery (Under-tenures) Act, 1865, *ante*, p. 41.

(Secs. 75-77.)

PART VII.

PENALTIES.

Penalty for obstructing persons in exercise of powers conferred by Act.

75. Whoever wilfully obstructs any person duly authorized under this Act in removing or levelling any embankment, house, hut or other building, or in the lawful exercise of any of the powers in this Act conferred, shall, in case such obstruction shall not amount to an offence within the provisions of the Indian Penal Code,^[1] be liable to imprisonment of either description for any period not exceeding six months, at the discretion of the Magistrate, or to fine not exceeding two hundred rupees. 45 of 1860.

Penalty for unauthorized interference with embankments or drainage.

^[2]**76.** (a) Every person who, in any of the territories to which this Act extends, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed or diverted, any water-course, if such act is likely to interfere with, counteract or impede any public embankment or any public water-course;

Penalty for unauthorised interference with embankments or drainage in prohibited tract.

(b) every person who, within the limits of the tract included in any prohibitory notification under section 6, without the previous permission of the Collector, shall erect, or cause or wilfully permit to be erected, any new embankment, or shall add to any existing embankment, or shall obstruct or divert, or cause or wilfully permit to be obstructed or diverted, any water-course; and

Penalty for abetment of such acts.

(c) every person who shall abet any such act as is mentioned in clauses (a) and (b),

shall be liable, on conviction, to a fine not exceeding five hundred rupees or in default of payment to imprisonment of either description for a period not exceeding six months.

Penalties for injuring embankments, etc.

77. No person shall, without due authority, cut through, or attempt to cut through, any public embankment, or destroy, or attempt to destroy any such embankment, or open or shut, or obstruct any sluice in any such embankment, or any public water-course; and every person who shall commit any breach of the provisions of this section shall in case the act shall not amount to mischief within the meaning of the Indian Penal Code,^[3] be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees. 45 of 1860.

[1] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

[2] Section 76 extends to the Division of Orissa, the words "Superintendent of Embankment" being substituted for "Collector" in clauses (a) and (b)—see s. 94, *post*.

[3] See Act 45 of 1860, s. 425, in General Acts, 1834-67, Ed. 1909, p. 352.

(Secs. 78-80.)

78. Every person who shall make any dam or other obstruction for the purpose of diverting or opposing the current of a river or water-course wherein or whereon there are public embankments, without the permission of the officer in immediate charge of the embankments,

Penalties for diverting rivers or permitting cattle to graze on embankments, etc.

or shall refuse or neglect to remove any such dam or obstruction so made by him when required to remove it by the Engineer, or without the permission of the Engineer previously obtained shall cut or otherwise alter the banks of any embanked river or water-course, or remove the earth from any public embankment, or drive stakes into it, or by any other wilful act destroy or diminish the efficiency of such embankment;

and every person who without such permission shall cause or knowingly and wilfully permit any cattle to graze upon any such embankment or tether or cause or wilfully permit any cattle to be tethered upon any such embankment, or root up any grass or other vegetation growing on any such embankment,

shall be liable to imprisonment of either description for a term not exceeding six months, or to a fine not exceeding two hundred rupees.

79. Whenever any person is convicted of an offence under either of the three last preceding sections, the convicting Magistrate may order that he shall remove the embankment or obstruction, or repair the damage, in respect of which the conviction is held, within a period to be fixed in such order.

Obstructions to be removed and damage repaired.

If such person neglects or refuses to obey such order within the fixed period, the Engineer may remove such embankment or obstruction or repair such damage, and the cost of such removal or repair shall be levied from such person in addition to any other penalty in the manner provided in section 307 of the Code of Criminal Procedure.^[1]

10 of 1872.

PART VIII.

MISCELLANEOUS.

80. Every proclamation and general notice by this Act required to be issued or given shall be published by affixing a copy of the same in the office of every Collector, Sub-divisional Officer and *Munsif* within his jurisdiction, and at every police-station within the limits of which any lands affected by such proclamation or notice are known by the Collector

Mode of publishing proclamation and issuing notices.

[¹] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to ss. 386, 387 and 389 of the latter Act—see s. 3(1) thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 81-83.)

to be situated; and by affixing copies of the same in conspicuous positions in such *hâts*, *bazars*, towns, villages or other public places (as the Collector may direct; and also by giving notice by beat of drum at such public places) that such copies have been affixed and that one copy of the papers containing the information which is the subject of such proclamation or general notice is open to inspection by all concerned at the office of the Collector.

Service of
special
notices.

81. Every special notice or order by this Act required to be served shall be served,—

- (1) by delivering a copy of the same to the person to whom it is directed, or, on failure of such service, by posting a copy on some conspicuous part of the house in which the said person resides, or by delivering a copy to any agent authorized to appear generally for the person to whom such notice or order is directed; or
- (2) by sending a registered letter containing a copy of such notice or order directed to the said person at his usual place of abode, or at the place where he may be known to reside; or
- (3) by posting a copy of the notice or order at the *mâl-cutcherry* of the estate, village or tenure to which the same relates; or, if no such *mâl-cutcherry* be found, on some conspicuous place on the said estate, village or tenure; or
- (4) if the person on whom the notice or order is to be served is a *zamindar*, by delivering a copy thereof to the agent who shall have paid an instalment of revenue next before or who may pay the instalment next after the preparation of such notice or order, on behalf of such *zamindar*.

In all cases where two or more persons are holders of an estate or tenure, service under the last two clauses shall be deemed to be good and sufficient service on each and all of such persons.

Powers of
Collector
and
Commissioner
on inquiry
and appeal.

82. In any inquiry or appeal held under this Act, the Collector and the Commissioner shall respectively have the same powers as those conferred on Courts by the Code of Civil Procedure^[1] of summoning and examining witnesses and compelling the production of documents.

No proceed-
ings to be
impeached
for mistake
or want of
form.

83. No proceedings under this Act shall be impeached or affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any estate or tenure or land in respect of which he is rendered liable to pay, provided the

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

(Secs. 84-87.)

directions of this Act be in substance and effect complied with; and no proceedings under this Act shall for want of form be quashed or set aside in any Court of Justice.

84. Every order passed by the Collector in respect of applications under section 18, and every order passed under sections 11, 50, 52 or 68, shall be appealable to the Commissioner of the Division, and every such order of the Commissioner, except when otherwise directed by this Act, shall be appealable to the Board of Revenue;[¹] but no appeal shall lie under this section against any order unless the same be presented within one month from the date of the order. Appeal from orders.

85. All the powers of a Collector under this Act shall be exercised under the general control and orders of the Commissioner of the Division, and all the powers of Collectors and Commissioners shall be exercised subject to the general control and orders of the Board of Revenue[¹] and of the Government. General control of Commissioner and Government.

Every order passed by any of the said authorities shall be subject at any time to be varied or set aside by the controlling authority.

86. Subject to the provisions of the two sections last preceding, every order passed by the Collector in respect of applications under section 18 and every order passed under sections 11, 50, 52 or 68, and every order passed by a controlling authority in respect of such order of a Collector, shall be final, and not liable to be modified or altered otherwise than as expressly provided in this Act. Orders to be final.

87. Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient, such land shall be restored by the Collector to the estate or tenure from which such land was originally taken on repayment of the compensation, if any, which was paid for such land when the same was taken for the purpose of the embankment. Disposal of lands no longer required for embankments.

If persons who are entitled to the restoration of any land under this section, or any of them, refuse or neglect to pay such price within a reasonable time after demand, the same shall be sold by the Collector as a revenue-free holding for such price as he can obtain for the same.

All sums obtained for lands conveyed under the provisions of this section shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of any new embankment or drainage-works, or of the expenses of maintaining any embankment

[¹] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913)

(Secs. 88-90.)

or drainage-works affecting the said lands and other adjacent lands, in reduction of the amount chargeable upon the *zamindars* and tenure-holders of the lands benefited, as hereinbefore provided, if any amount be so chargeable.

Collector may delegate any of his powers to a Deputy Collector.

88. A Collector may delegate any of his powers under this Act to a Deputy Collector; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector if presented within thirty days of the date of the order.

Every such delegation of power shall be reported to the Commissioner of the Division.

Jurisdiction.

89. All offences created by this Act shall be inquired into and tried by a Magistrate of the first or second class.

Power to make, alter and cancel rules.

90. The Lieutenant-Governor may from time to time make rules,^[1] consistent with the provisions of this Act, to regulate the following matters:—

- (a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
- (b) the business of Embankment Committees;
- (c) the cases in which, the officers to whom and the conditions subject to which orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;
- (d) the person by whom, the time, place or manner at or in which anything for the doing of which provision is made in this Act, shall be done;
- (e) the amount of any charge made under this Act; and
- (f) generally to carry out the provisions of this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelment shall be published in the Calcutta Gazette, and shall thereupon have the force of law.

Provided that no rules shall be made by the Lieutenant-Governor under the powers conferred on him by this section until a draft of the same shall have been published in the Calcutta Gazette for one month, after which time the Lieutenant-Governor may pass such rules as originally published, or with such alterations, additions and omissions as he may think fit.

[¹] For a list of rules made under s. 90, see the Bihar and Orissa Local Statutory Rules and Orders. Vol. I, Pt. VI.

(Secs. 91-94.)

91. Nothing in this Act shall apply to any embankment, land or ^{Saving of} watercourse which is under the operation of any of the following Acts:— ^{operation of} ^{certain Acts.}

the Bengal Drainage Act, 1880,^[1]

the Bengal Irrigation Act, 1876,^[2]

Ben. Act 6 of
1880.
Ben. Act 3 of
1876.

Bengal Act 5 of 1864^[3] (*an Act to amend and consolidate the law relating to the collection of Tolls on Canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the provinces under the control of the Lieutenant-Governor of Bengal.*)

PART IX.

SPECIAL PROVISIONS FOR THE PROVINCE OF ORISSA.

[⁴]92. The powers conferred on the Collector by section 25 may, in ^{Powers con-} the Province of Orissa, be exercised by the Superintendent of Embank- ^{ferred on} ments with the consent of the Collector previously obtained, and the ^{Superinten-} reference in the said section to other parts of this Act shall be deemed ^{dent of Em-} to be references to the corresponding portions respectively of Act 32. of ^{bankments} 1855^[5] (*an Act relating to Embankments*) ^{in Orissa.}

The consequences mentioned in section 26 shall attach to everything done by the Superintendent of Embankments under the provisions of this section.

[⁴]93. In cases in which the Engineer in charge of any embankment ^{Power to} may be of opinion that delay for the purpose of obtaining the orders of ^{Engineer to} the Superintendent of Embankments and the Collector would be attended ^{act in urgent} with grave and imminent danger to life or property, the Engineer may ^{cases.} exercise the powers conferred on the said Superintendent with the consent of the Collector in pursuance of the last preceding section.

The Engineer shall forthwith report to the said Superintendent any action taken by him under this section, and shall be guided by any instructions which he may receive from him in respect thereof.

94. Sections 4, 5, 6, 34 and 76 shall extend to the Province of ^{Sections} Orissa, the words "Superintendent of Embankments" being substituted ^{made applic-} for the word "Collector" in clauses (a) and (b) of section 76. ^{able to Orissa.}

[¹] Printed *ante*, p. 337.

[²] Printed *ante*, p. 201.

[³] The Canals Act, 1864, *ante*, p. 11.

[⁴] The ss. 92 and 93 apply to Orissa—see Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code.

[⁵] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

(Schedules I-III.)

SCHEDULE I.

(Referred to in section 2.)

(Portions of Bengal Act 6 of 1873 which are not repealed.)

12. } [Printed *ante*, p. 155.]
 13. }

21. Proviso. [Printed *ante*, p. 155.]

26. }
 27. } [Printed *ante*, p. 156.]
 28. }
 29. }

Schedules B, C, D and E.[¹]

SCHEDULE II.

(Referred to in section 2.)

Section of Bengal Act 6 of 1873 in which the reference is made.	The reference as it stands.	To what portion of the present Act the reference is to be read to apply.
Section 12	To "the last preceding section."	Section 25.
Section 12	To section 18	Section 30.
Section 12	To section 25	Section 37.
Section 21	To "such proceedings"	Section 19.
Section 26	To Part III	Part III.
Section 26	To "this Part"	Part V.

SCHEDULE III.

(Referred to in section 8.)

Notice is hereby given, as required by section 8, Bengal Act 2 of 1882, to all persons interested, that it appears to the Collector that the following work should be done; that is to say [here state the nature of the

[¹] Printed *ante*, p. 158.

(Schedule III.)

work and the purpose for which it is to be undertaken.]* For the execution of this work the undermentioned land will be required to be taken up:—

1	2	3
<i>Pargana</i> in which land is situated.	Village in which land is situated.	Area of land.

Estimates of the proposed work, with the necessary specifications and plans, together with a copy of the survey map showing the lands likely to be affected by the said work, are open for inspection at this office by any interested person, who is allowed to take copies thereof.

†The total probable cost of such work will be the sum of Rs. and the rate per acre of the area benefited or protected by the said work is estimated at Rs.

The following estates and villages will probably be affected by the work proposed (*here set out a list of the estates and villages*).

Any person interested and wishing to show cause against the execution of the works specified is hereby required to appear before the Collector for that purpose on the day of

The day of

A. B.,

Collector of

* The words in italics and the tabular form to be omitted if no land is to be acquired.

† These words may be omitted, unless it is proposed to recover the cost of the work from the *zamindars* and tenure-holders.

BENGAL ACT 3 OF 1883.

{THE BENGAL TRAMWAYS ACT, 1883.}

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BENGAL ACT 3 OF 1883.

(THE BENGAL TRAMWAYS ACT, 1883.)^[1]

(2nd May, 1883.)

**An Act to authorize the making and to regulate the
working of Tramways in Bengal.**

Whereas it is expedient to facilitate the construction and regulate the Preamble.
working of tramways within the territories subject to the Government
of the Lieutenant-Governor of Bengal^[2]; It is enacted as follows:—

1. This Act may be cited for all purposes as the Bengal Tramways Short title.
Act, 1883.

(Commencement.) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. For the purposes of this Act the terms hereinafter mentioned shall, Interpreta-
unless there be something repugnant in the subject or context, have the tion.
meanings hereinafter assigned to them:—

the term “local authority” shall mean—

“Local
authority.”

- (1) bodies of persons for the time being appointed or elected to
conduct the affairs of any municipality under Bengal Act
5 of 1876 or other^[3] law for the time being in force for the
purpose of regulating municipalities in Bengal;
- (2) any Board, Committee, Department or other body or person in
whom a road as defined by this Act is vested, or who have
the power to maintain or repair such road;

the term “area” in relation to a local authority shall mean the “Area.”
area within the jurisdiction of such local authority;

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1883, Pt. IV, p. 46; for Report of Select Committee, see *ibid.*, p. 61; and for Proceedings in Council, see *ibid.*, Supplement, pp. 42, 47, 229 and 528.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the preamble.

The application of the Act is barred in—

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),
in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, *ibid.*

SIMILAR ACTS.—The Indian Tramways Act, 1886 (11 of 1886—printed in General Acts, 1879-86, Ed. 1909, p. 583), which runs on lines similar to those of the present Act, does not extend to Bihar and Orissa. The Lieutenant-Governor in Council is, however, empowered by s. 2 of the Act to extend it to Bihar and Orissa or any part thereof.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), *post*, p. 501.

(Sec. 3.)

- “Municipality.” the term “municipality” shall mean any place in which Bengal Act 5 of 1876 or any other ^[1] law for the time being in respect of Bengal municipalities is in force;
- “Road.” the term “road” shall mean any carriage way, being a public thoroughfare, and the carriage way of any bridge forming part or leading to the same;
- “Tramway.” the term “tramway” shall mean a tramway constructed under this Act. ^[2]

PART I.

ORDERS BY THE LOCAL GOVERNMENT AUTHORIZING THE CONSTRUCTION OF TRAMWAYS.

By whom orders authorizing the construction of tramways may be obtained.

3. An order made by the Local Government authorizing the construction of any tramways in any municipality or area may be obtained by—

1st, the local authority of such municipality or area;

2nd, any person, persons, corporation or company with the consent of such local authority.

And any such local authority, person, persons, corporation or company shall be deemed to be “promoters” of a tramway, and are in this Act referred to as “the promoters.”

When applications for authority to construct tramways may be made.

Where the local authority consists of a body of persons, Board or Committee, no application shall be made to the Local Government for the purpose of authorizing the construction of tramways in a municipality or area until a resolution, approving of the intention to make such application, shall be passed at a special meeting of the members constituting the local authority in such municipality or area.

Such special meeting shall not be held unless a month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given, and such notice shall require that all objections to the proposed tramways shall be submitted for the consideration of the local authority before the date fixed for the special meeting.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution.

^[1] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), *post*, p. 501.

^[2] For an explanation of the term “promoters,” see s. 3, on this page.

(Secs. 4-6.)

4. At the time of making an application for such order the promoters shall also forward to the Local Government—

Documents to be forwarded with application.

1st, a memorial signed by the promoters descriptive of the undertaking;

2nd, a copy of the proceedings and resolution of the special meeting held under the provisions of section 3;

3rd, a copy of the provisional agreement made between the promoters and local authority, where the promoters are not themselves the local authority;

4th, an estimate of the proposed works, signed by the persons making the same;

5th, all necessary maps, plans, sections and drawings of the proposed work.

5. The Local Government shall consider the application, and may, if it think fit, direct an inquiry as to the propriety of proceeding upon such application, and it shall consider any objection thereto that may be filed on or before such day as it may from time to time appoint.

Local Government to determine on application and objection.

Where it appears to the Local Government expedient and proper that the application should be granted, with or without addition or modification, or subject or not to any restriction or condition, the Local Government may settle and make an order^[1] accordingly, and such order shall be published in the Calcutta Gazette.

Local Government may make and publish order.

Every such order shall empower the promoters therein specified to make the tramway upon the gauge and in manner therein described, and shall contain such provisions, fix such maximum rates of fare and prescribe such penalties for default as (subject to the provisions of this Act) the Local Government, according to the nature of the application and the facts and circumstances of each case, thinks fit.

Form and contents of order.

Where the promoters are not the local authority, the order shall set forth the agreement made between the promoters and the local authority, and one of the provisions of such agreement shall settle the manner in which the value of the tramway shall be calculated in the event of its purchase by the local authority, under sections 39, 40 or 41.

6. The Local Government, on the application of any promoters empowered by an order to construct a tramway, may from time to time revoke, amend or vary such order by a further order^[2]:

Power to revoke, amend or vary order.

[¹] For a list of orders made under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] For a list of orders made under s. 6, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 7-10.)

Provided that, whenever the promoters are not the local authority, the Local Government shall, before passing such order, call upon the local authority to state any objection it may have to such application.

Power to authorize joint work.

7. Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the order may be adapted according to the circumstances of the case.

Local Government may in certain cases dispense with consent of local authority.

8. Where it is proposed to lay down a tramway in two or more areas, and any local authority having jurisdiction in any of such areas does not consent thereto, the Local Government may nevertheless make an order authorizing the construction of such tramway, if it is satisfied after inquiry that two-thirds of the length of such tramway is proposed to be laid in an area or areas the local authority of which area or areas does consent thereto.

Promoters' powers to cease at expiration of prescribed time.

9. If the promoters empowered by any order under this Act to make a tramway do not, within the period prescribed in such order, complete the tramway and open it for public traffic; or,

if the works, are not substantially commenced within the latest date prescribed in such order for their commencement, or,

if the works, having been commenced, are suspended without a reason sufficient, in the opinion of the Local Government, to warrant such suspension;

the powers given by the order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised to the extent and in the manner specified in such order.

A notice inserted by the Local Government in the Calcutta Gazette to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement or suspension.

Payment of expenses when local

10. When the local authority of any area are the promoters of any tramway, the expenses incurred by them in constructing and working

(Secs. 11-15.)

such tramway under the provisions of this Act, including the expenses preparatory thereto, may be paid out of the funds under the control of such local authority.

11. When the local authority are not the promoters, they may fix and demand from the promoters such rent for the use of roads as may be agreed upon.

Rent for use of road when local authority are not promoters.

12. Any moneys received by any local authority by way of rent or tolls in respect of any tramway constructed and worked under the provisions of this Act may be applied by them to the purposes for which other funds under the control of such local authority may be applied.

Application of rent or tolls.

13. The Local Government may from time to time make, and when made may revise, modify, annual, add to or confirm, any rules it may be expedient to make for the purpose of carrying this Act into execution.

Power to make rules.

PART II.

CONSTRUCTION OF TRAMWAYS.

14. Every tramway shall be constructed and maintained on such gauge and in such manner as may be specified in the order of the Local Government empowering the construction of such tramway, and, before the work of construction is begun, the maps, drawings and specification showing the proposed construction of such tramway shall be submitted to the local authority and be approved by it, and the cars and carriages intended to run on the tramways shall also be of such construction and furnished with such brakes and other appliances as shall have been approved by such local authority.

Form in which tramways are to be constructed and maintained.

15. The promoters may from time to time, for the purpose of constructing and maintaining any tramways under this Act, open and break up the soil and pavement of any of the roads upon which the construction and maintenance of such tramway has been authorized by the order of the Local Government in that behalf, and therein lay sleepers and rails, and repair, renew, alter or remove the same; and may, for the purposes aforesaid, do in and on such roads all other acts which shall from time to time be necessary for constructing and maintaining their tramways:

Power to break up streets.

Provided that when the powers granted under this section shall be exercised by the promoters who are not the local authority, such powers shall be exercised subject to the following regulations:—

1st.—They shall give to the local authority notice in writing of their intention to open or break up any such road, specify—

(Sec. 15.)

ing the time at which they will begin to do so, and the portion of the road proposed to be opened or broken up. Such notice to be given at least seven days before the commencement of the work.

2nd.—They shall not open or break up or alter the level of any such road, except under the superintendence and to the reasonable satisfaction of the local authority, for which superintendence the promoters shall pay all reasonable expenses, unless the local authority neglect to give such superintendence at the time specified in the notice, or discontinue the same during the work.

3rd.—They shall not, without the consent of the local authority in writing, open or break up at any one time a greater length than a quarter of a mile in any one length, and shall leave an interval of at least a quarter of a mile between any two such places at which they may open or break up such road.

4th.—They shall, with all convenient speed, and in all cases within two calendar months at the most, unless the local authority otherwise consent in writing, complete the work for which the said road shall be broken up, and fill in the ground, and make good the surface, and, to the reasonable satisfaction of the local authority, restore the road to as good a condition as that in which it was before it was opened or broken up and clear away all surplus materials or rubbish occasioned thereby.

5th.—They shall in the meantime, when such road is opened or broken up, cause it to be fenced and watched, and to be properly lighted at night.

6th.—They shall make good all damage done to the gas and water-pipes, sewers, drains, culverts, bridges and fences whether belonging to the local authority or to private individuals, by the disturbance thereof, and shall not cause any interruption in the supply of gas in or through any main or pipe, or the flow of water through any pipe, drain, culvert, bridge or other waterway; if they fail to make such damage good, or to remove such interruption within reasonable time, the local authority may, without prejudice to the penalties payable under section 29, cause the same to be made good at the promoters' expense.

(Secs. 16-21.)

16. The promoters shall at their own expense at all times maintain Promoters to and keep in good condition and repair, in such manner as the local authority shall direct, the rails of which any of their tramways shall for keep the tramway roads in the time being consist, and so much of any road as lies between the rails proper re- of any tramways; and, in the case of double lines or turnouts or sidings pair. the portion of the road between the tramways, and in every case so much of road as extends eighteen inches beyond the rails of and on each side of any such tramways; and in the course of carrying out repairs it shall not be necessary to give notice thereof to the local authority.

17. In exercising the powers given to them by the last two preceding Promoters sections the promoters shall arrange their work so as to afford the least not to ob- possible obstruction to the ordinary traffic of the roads or to the ordinary struct ordi- nary traffic. means of approach to houses situated on either side of the roads, and so as to admit of as free and unrestricted entry at all times into the sewers, drains, culverts and bridges for the time being in use as is possible under the circumstances and also so as to enable proper repairs to be made to water or gas-pipes by the direction of the local authority.

18. Nothing in this Act, or in any by-law made under this Act, shall Reservation of right of public to use roads. take away or abridge the right of the public to pass along or across every or any part of any road along or across which any tramway is laid, whether on or off the tramway, with carriages not having flange wheel or wheels suitable to run on rails. But the right of the public shall not include the use of any new roadway, embankment or earthwork constructed or acquired for the special and exclusive use of the tramway.

19. Notwithstanding anything in this Act contained the promoters Right of user shall not acquire, or be deemed to acquire, any right other than that of only. user of any road along or across which they lay any tramway.

PART III.

WORKING OF TRAMWAYS.

20. No tramway shall be opened for public traffic until the same has No tramway been inspected and certified by an Engineer or other officer, appointed in to be opened that behalf by the Local Government, to be fit for such traffic. without certi- ficate from Engineer.

21. When a tramway has been completed under the provisions of this Local au- Act and certified to be fit to be opened for public traffic under the last thority may preceding section, the local authority or other promoters may, subject to lease or take tolls. the provisions of this Act, place and run carriages on such tramway, and demand and take tolls and charges in respect of the use of such carriages;

(Secs. 22-26.)

or may, by lease to be approved of by the Local Government, demise to any person, persons, corporation or company the right of user by such person, persons, corporation or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorized; or such authority may leave such tramway open to the public, and may in respect of such user demand and take the tolls and charges authorized.

Carriages
how to be
worked.

22. The cars and carriages of the promoters on the lines of the tramway shall be worked with such power, animal, mechanical or otherwise, as may be specified in the order issued by the Local Government under section 5.

Promoters
may use
tramway
carriages
with flange
wheels.

23. The promoters may use on their tramways carriages with flange wheels or wheels suitable for running on the prescribed form of rail, and, subject to the provisions of this Act, they shall have the exclusive use of their tramways for carriages with flange wheels, or other wheels, suitable for the said form of rail.

Promoters
may fix
and demand
fares.

24. The promoters shall have power from time to time to fix the rates of fares for carrying passengers and goods in the said cars or carriages, and may demand and take the same for every passenger travelling upon any of their tramways, or for the carriage of goods by their tramways:

Provided that the rate of fare for each person or parcel shall not exceed the maximum rates authorized in the order of the Local Government issued under section 5.

Printed list
of fares, etc.,
to be placed
in carriages.

25. A printed list, in English and the vernacular of the district, of all the fares and charges fixed under the authority of the last preceding section, and a printed copy in the same languages of all by-laws in force as hereinafter mentioned, shall be exhibited in a conspicuous place inside each of the cars or carriages used by the promoters upon any of their tramways.

Fares how
to be paid.

The fares and charges fixed as aforesaid shall be paid to such persons at such places, upon or near to the tramways, and in such manner and under such regulations as the promoters may, by notice to be annexed to the list of fares, from time to time appoint.

By-laws by
local author-
ity.

26. The members constituting the local authority in a municipality or area in special general meeting may, subject to confirmation thereof by the Local Government, from time to time make such by-laws^[1] as to the rate of speed, number of passengers and mode of use of the tramways as the convenience and safety of the public may require, and as are not inconsistent with this Act or any rules framed under section 13.

[¹] For by-laws made under ss. 26 and 27, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 27-30.)

27. The promoters may, subject to confirmation as aforesaid, from time to time make such by-laws^[1]—

for preventing disturbances, or the entry of persons suffering from infectious diseases, or the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to them; and

for regulating the travelling in or upon any carriage belonging to them:

Provided that such by-laws are not inconsistent with this Act or with any rules or by-laws framed under sections 13 and 26.

28. All rules and by-laws made under sections 13, 26 and 27, and confirmed by the Local Government, shall, when so confirmed, be published in the Calcutta Gazette, and such rules and by-laws when so published shall, until repealed or altered, be of the same effect as if they had been inserted in this Act:

Provided that no rules and by-laws shall be confirmed by the Local Government until they shall have been published for at least one month previously in the Calcutta Gazette and in one or more of the local newspapers (if any exist) which circulate in the district to which such rules and by-laws relate.

PART IV.

OFFENCES.

29. If the promoters, not being the local authority, fail in any respect to comply with the provisions of sections 14, 15, 16, 17, 20 and 22 of this Act, they shall for every such offence (without prejudice to the enforcement of specific performance of the requirements of this Act, or to any other remedy against them), upon complaint of any person injuriously affected thereby, be liable to a penalty not exceeding two hundred rupees and to a further penalty not exceeding fifty rupees for each day during which any such failure continues after the first day on which such penalty is incurred.

30. If any person wilfully obstructs any person acting under the authority of the promoters in the lawful exercise of their powers in setting out or making, laying down, repairing or renewing a tramway,

^[1] For by-laws made under ss. 26 and 27, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 31-34.)

or injures or destroys any mark made for the purpose of setting out the lines of the tramway, he shall, for every offence, be liable to a penalty not exceeding fifty rupees, and shall also be liable to pay such damages as may be awarded in respect of such injury by any competent Court.

Penalty for interfering with tramway.

31. If any person without lawful excuse (the proof whereof shall lie on him) wilfully does any of the following things, namely:—

interferes with, removes or alters any part of a tramway of the promoters, or of the works connected therewith;

does or causes to be done anything in such a manner as to obstruct any carriage using the tramways;

or knowingly aids or assists in the doing of such thing,

he shall for every such offence be liable (in addition to any proceedings by way of criminal charge or otherwise to which he may be subject) to a penalty not exceeding one hundred rupees.

Penalty for avoiding payment of proper fare.

32. If any person travelling or having travelled in any carriage of the promoters avoids or attempts to avoid payment of his fare, or if any person having paid his fare for a certain distance knowingly and wilfully proceeds in any such carriage beyond such distance and does not pay the additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding ten rupees.

Servant of promoters may arrest persons avoiding payment of fares.

33. It shall be lawful for any servant of the promoters to arrest and take to the nearest police-station any person who shall be discovered in committing or attempting to commit any such offence as in the last preceding section mentioned, and who shall refuse to give his name and residence, and is unknown to such servant.

Carriage of dangerous or offensive goods.

34. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous or offensive nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the promoters with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding fifty rupees for every such offence, and it shall be lawful for the promoters to refuse to accept or carry any parcel that they may suspect to contain goods of a dangerous or offensive nature, or to require the same to be opened to ascertain the fact.

(Secs. 35-38.)

35. Any person offending against any by-law made under the provisions of this Act shall forfeit for every offence any sum not exceeding twenty rupees to be imposed in such by-laws^[1] as a penalty for such offence.

PART V.

MISCELLANEOUS.

36. The promoters shall be answerable for all accidents, damages and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and in all cases where the promoters are not the local authority they shall save harmless the local authorities and their respective officers and servants from all damages and costs in respect of such accidents, damages and injuries.

37. Nothing in this Act shall limit the powers of the local authority or the police to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such local authority or police may exercise their authority as well on as off the tramway, and with respect as well to the traffic of the promoters as to the traffic of other persons.

The local authority shall not be liable to pay to the promoters any compensation for loss of traffic occasioned by the reasonable exercise of such authority.

38. Nothing in this Act shall be construed to prevent the local authority or any corporate body or persons, in the exercise of the powers conferred upon them under any law for the time being in force, from opening, breaking up, widening, altering, diverting or improving any of the roads, bridges, drains or culverts traversed by the tramways for the purposes for which they may now lawfully open, break up, widen, alter, divert or improve the same:

Provided—

- (1) that they shall cause as little detriment or inconvenience to the promoters as circumstances admit;
- (2) that they may (if absolutely necessary, but not otherwise) order the temporary stoppage of traffic on the tramways or

[¹] For by-laws made under s. 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 39.)

- any of them on giving twenty-four hours' previous notice in writing to the promoters;
- (3) that before they commence any work whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters notice of their intention to commence such work, specifying the time at which they will begin to do so; such notice to be given eighteen hours at least before the commencement of the work;
 - (4) that, in the event of their so interfering with or stopping the running of any tramway under this section, an abatement, proportioned to the length of road over which and time during which running is stopped, shall be made from the rent (if any) reserved and payable by the promoters;
 - (5) that any alteration of the position of any of the tramways, or the making good of any injury or damage that may be occasioned thereto by reason of such widening, alteration or improvement shall be executed by the promoters at the expense of the local authority.

Discontinuance of Tramways.

**Tramways
to be remov-
ed in certain
cases.**

39. If at any time after the opening of any tramway for traffic the promoters discontinue the working of such tramway or of any part thereof for the space of three calendar months (such discontinuance not being occasioned by circumstances beyond the control of such promoters, for which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Local Government, the Local Government, if it think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall from the date of such order be at an end, and thereupon the said powers of the promoters shall cease and determine unless the same are purchased by the local authority in manner by this Act provided.

Where such order has been made the Engineer or other officer appointed on that behalf by the Local Government may, at any time after the expiration of two months from the date of such order, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to such Engineer or officer the cost of such removal and of the making good of the road by such Engineer or officer.

Such cost to be certified by such Engineer or officer, whose certificate shall be final and conclusive.

(Secs. 40-41.)

And, if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, such Engineer or officer may without any previous notice to the promoters (but without prejudice to any other remedy which he may have for the recovery of the amount) sell and dispose of the materials of the tramway or part of the tramway removed, either by public auction or private sale, and for such sum or sums and to such person or persons as such Engineer or officer may think fit; and may out of the proceeds of such sale make and re-imburse himself the amount of cost certified as aforesaid and of the costs of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the said Engineer or officer to the promoters.

Inability of Promoters.

40. If at any time after the opening of any tramway it appears to the local authority, or to the Magistrate of the district in which such tramway is situate, that the promoters of such tramway are insolvents, or that they are unable to maintain such tramway, or work the same with advantage to the public, Proceedings in case of inability of promoters.

the Local Government, upon a representation to that effect made by such Magistrate or local authority, may direct an inquiry by a referee into the truth of the representation,

and if the referee shall find that the promoters are such insolvents, or that they are unable to maintain such tramway or work the same with advantage to the public, the Local Government may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end,

and the powers of the promoters shall cease and determine at the expiration of the said period unless the same are purchased by the local authority in manner by this Act provided; and thereupon the Engineer or other officer appointed on that behalf by the Local Government may remove the tramway in like manner, and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for the recovery of such costs in every respect, as in cases of removal under the last preceding section.

Purchase of Tramways.

41. The local authority shall have the right of purchasing the tramway, with the plant, buildings, stores, rolling-stock and everything Local authority to have right of pur-

(Sec. 41.)

chasing
tramway
after twenty-
one years.

connected therewith, upon the expiration of twenty-one years from the date of the order of the Local Government authorizing the construction of such tramway, upon declaring its intention so to do in writing not less than six months before the expiration of the said twenty-one years, and shall have a renewed right of purchase at the end of every seven years after the expiration of the said twenty-one years upon similar notice being given; and the value to be placed upon the tramway shall be calculated in a manner to be settled in the agreement entered into between the promoters and the said local authority and set forth in the order of the Local Government:

Provided that the promoters and the local authority may, with the consent of the Local Government, provide in the said agreement for the sale and purchase of the tramway on the expiration of any shorter^[1] [or longer] periods than those hereinbefore specified.

^[1] The words "or longer" were inserted by the Bengal Tramways (Amendment) Act, 1904 (Ben. Act 1 of 1904), s. 2, in Vol. III of this Code.

BENGAL ACT 1 OF 1884.

[THE PURI LODGING-HOUSE (EXTENSION) ACT, 1884.][¹]

(12th March, 1884.)

An Act further to amend Bengal Act 4 of 1871.^[2]

Ben. Act 4 of
1871.

Whereas it is expedient further to amend the Puri Lodging-house Preamble. Act, 1871 (4 of 1871), as amended and extended by Bengal Act 2 of 1879;^[3] It is enacted as follows:—

1. (*Commencement of Act.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. In section 3 of Bengal Act 2 of 1879 the following clause shall be inserted after the second paragraph thereof:—

“in section 7, after the word ‘each’ the words ‘day or’ shall be inserted.”

Further
modification
of Ben. Act
4 of 1871.

[¹] SHORT TITLE.—This short title was given by the Repealing and Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code. That Act is now known as the Amending Act, 1903—*vide* Act 10 of 1914, Sch. II.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1884, Pt. IV, p. 45; and for Proceedings in Council, see *ibid*, 1884, Supplement, pp. 57, 91 and 171.

LOCAL EXTENT.—As to the local extent of this Act, see footnote on p. 135, *ante*. The Act has been repealed by the Puri Lodging-house (Amendment) Act, 1908 (Ben. Act 3 of 1908), s. 16, in Vol. III of this Code.

The Act applies to the Sonthal Parganas—see Vol. IV, Pt. VI.

The application of the Act is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code.

[²] Printed *ante*, p. 135.

[³] Printed *ante*, p. 273.

BENGAL ACT 3 OF 1884.

(THE BENGAL MUNICIPAL ACT, 1884.)

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354. Publication of by-laws, etc.
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357. Service of notice on owner or occupier of land.
358. Tax not invalid for want of form.
359. Holder of license to produce it when required.
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360. Recovery of moneys due to the Commissioners.
361. Power to sell unclaimed holdings for money due.
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363. No action to be brought against the Commissioners or their officers until after one month's notice of cause of action.
364. *Chaukidari chakaran* lands.
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366. Penalty on officers, etc., taking unauthorized fees.
367. Saving clause.

THE FIRST SCHEDULE.

Municipalities in which the Commissioners shall be appointed by the Local Government.

THE SECOND SCHEDULE.

Municipalities in which the Chairman shall be appointed by the Local Government.

THE THIRD SCHEDULE.

- Form A.*—Notice to be published of the preparation of the List of Assessment on Persons.
Form B.—Notice to be published of the preparation of the Valuation and Rating List of Holdings.

THE FOURTH SCHEDULE.

Form A.—Notice of Demand under section 120.

Form B.—Table of fees payable upon distraints under this Act.

Form C.—Distress Warrant.

Form D.—Form of Inventory and Notice.

Form E.—Register of distraints of property and sales held on account of arrears
for the month of in .

THE FIFTH SCHEDULE.

Tax on carriages and animals.

THE SIXTH SCHEDULE.

Enactments repealed.

•

BENGAL ACT 3 OF 1884.

[THE BENGAL MUNICIPAL ACT, 1884.][¹]

(7th May, 1884.)

An Act to amend and consolidate the law relating to municipalities.

Whereas it is expedient to consolidate and amend the law relating to municipalities within the territories subject to the government of the Lieutenant-Governor of Bengal; [²] It is enacted as follows:—

PRELIMINARY.

1. This Act may be called the Bengal Municipal Act, 1884:

Short title
and com-
mencement.

[And it shall come into force on such date [³] as the Lieutenant-Governor may direct, not being more than three months after the date [⁴] on which it may be published in the Calcutta Gazette with the assent of the Governor General.]

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1883, Pt. IV, p. 39; for Preliminary Report of Select Committee, see *ibid*, p. 243; for further Report of Select Committee, see *ibid*, 1884, Pt. IV, p. 1; and for Proceedings in Council, see *ibid*, 1882, Supplement, p. 1488; 1883, Supplement, pp. 44, 511 and 2079; 1884, Supplement, pp. 53, 92, 172, 266, 322, 383, 396, 465, 498, 515 and 559.

LOCAL EXTENT.—The preamble to Ben. Act 3 of 1884 refers to Bengal generally, but the Act does not apply to Calcutta, for which there is a special Act, namely the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), in Vol. III of the Bengal Code.

Ben. Act 3 of 1884 applies—

(1) to places which were constituted municipalities under the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876),—see s. 3, *post*, p. 503, and

(2) to towns and villages to which the Act is extended under s. 8, *post*, p. 505.

Power to withdraw municipalities from the operation of this Act, to exclude local areas from municipalities, and to include local areas in municipalities, is given by s. 9, *post*, p. 506.

Restrictions on the application of Ben. Act 3 of 1884 to particular territory are imposed by ss. 5 and 10, *post*, pp. 503 and 508.

The Local Government is empowered by ss. 173 and 174 (*post*, p. 562) to direct that Part V (ss. 173 to 219) shall not be in force in particular municipalities.

Part VI (ss. 220 to 278) and Part X (ss. 335 to 345) apply (see s. 220, *post*, p. 575)—

(a) to municipalities in which Parts VII and IX, respectively, of the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), were in force, and

(b) to municipalities to which they are specially extended by the Local Government.

Parts VII to IX (ss. 279 to 334A) apply only to municipalities to which they are extended by the Local Government—see s. 220, *post*, p. 575.

This Act and the amending Acts, *viz.*, Bengal Acts 3 of 1886, 4 of 1894, 2 of 1896 are applicable to the Sonthal Parganas—see Vol. IV, Pt. VI; but their application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

[²] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[³] This Act came into force on the 1st August, 1884—see Calcutta Gazette, 7th May, 1884, Pt. I, p. 587.

[⁴] *i.e.*, the 7th May, 1884.

(Sec. 2.)

Enactments
repealed.

* * * * *

*[1]

2. * * * [2] *[The enactments specified in the sixth Schedule shall be repealed to the extent mentioned in the third column thereof.]*

But this repeal shall not revive any office, authority or thing abolished by any such enactment, or affect the validity of anything done or suffered, or any right, title, obligation or liability accrued, before the commencement of this Act.

And] all rules and by-laws prescribed, assessments, valuations, measurements, divisions and appointments made, powers conferred and notifications published under any such enactment, and all other rules (if any) now in force and relating to the matters hereinafter dealt with, shall (so far as they are consistent with this Act) be deemed to have been respectively prescribed, made, conferred and published hereunder.

Saving
clause.

[3] *[In every enactment passed before this Act comes into force in which reference is made to Bengal Act 3 of 1864 (the District Municipal Improvement Act), [4] or to any enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Act or to its corresponding part or section.]*

“Notifica-
tions”
defined.

* * * * *

*[5]

[6] *[The expression “notifications” as used in this section shall be deemed to include, and to have always included, all directions, declarations and orders given, or made, and published under any enactment referred to in this section:]*

Provided that nothing in this definition shall be deemed to affect any decision or order of a competent Court made before the date on which this Act shall come into force.]

In respect of all the matters aforesaid, the Commissioners under this Act shall be substituted for the Commissioners elected or appointed under the Bengal Municipal Act, 1876.[7]

Ben. Act 5 of
1876.

[1] The third clause of s. 1, as to notifications, etc., before the commencement of the Act was repealed by the Amending Act, 1903 (1 of 1903), and is omitted.

[2] Formal words in s. 2 were repealed by the Amending Act, 1903 (1 of 1903), and are omitted.

[3] This clause in square brackets in s. 2 was substituted for the original clause by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 2 (2), in Vol. III of this Code. The original clause ran thus—

“And all references to any such enactment shall (so far as may be practicable) be deemed to be made to this Act.”

[4] The District Municipal Improvement Act, 1864. It was repealed by Bengal Act 5 of 1876, and the latter Act has again been repealed by s. 2 of this Act.

[5] The fifth clause of s. 2, as to pending proceedings, was repealed by the Amending Act, 1903 (1 of 1903), and is omitted.

[6] These clauses in square brackets were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 2 (1), in Vol. III of this Code.

[7] The Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), was repealed by s. 2 of this Act—see Sch. VI, *post*, p. 627.

(Secs. 3-6.)

3. Every place which has been constituted a municipality under the provisions of the Bengal Municipal Act, 1876,^[1] and has not been withdrawn from the operation of the said Act before this Act comes into force, shall, from the time when this Act shall come into force, be deemed to be constituted a municipality under the provisions of this Act.

Ben. Act 5 of 1876.

Existing municipalities.

4. All property, moveable and immovable, and all interests of any kind whatsoever, derived under any of the enactments specified in the sixth Schedule, or otherwise, and vested in, or held in trust for, the late Commissioners under the said Bengal Municipal Act, 1876,^[1] shall become vested in the Commissioners, and their successors; and all rights of whatsoever description used, enjoyed or possessed by the late Commissioners under any such enactment shall become vested in the Commissioners for the purposes of this Act.

Ben. Act 5 of 1876.

All property of late Commissioners vested in Commissioners under this Act.

5. Notwithstanding anything contained in section 3, this Act shall not take effect in any cantonment without the consent of the Governor General in Council previously obtained, nor shall the Local Government extend this Act, or any part thereof, to any cantonment without such consent.

Act not to be extended to cantonments without consent of Governor General.

6. In this Act, unless there be something repugnant in the subject or context,—

Definitions.

(1) “carriage” means any wheeled vehicle with springs used for the conveyance of human beings and ordinarily drawn by animals:

(2) “cart” means any cart, hackney or wheeled vehicle with or without springs ordinarily drawn by animals, and not included in the definition of “carriage”:

(3) “holding” means land held under one title or agreement and surrounded by one set of boundaries:

Provided that where two or more adjoining holdings form part and parcel of the site or premises of a dwelling house, manufactory, warehouse or place of trade or business, such holdings shall be deemed to be one holding for the purposes of this Act other than those mentioned in clause (a) of section 85:

Explanation.—Holdings separated by a road or other means of communication shall be deemed adjoining within the meaning of this proviso:

(4) “house” includes any hut, shop, warehouse or building:

“House.”

(5) “immovable property” and “land” include (besides land) benefits arising out of land, houses, things attached to the earth, or permanently fastened to anything attached to the earth:

“Immovable property.”

[¹] The Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), was repealed by s. 2 of this Act—see Sch. VI, *post*, p. 627.

(Sec. 6.)

“Movable property.” (6) “movable property” means property other than immovable property:

“Magistrate of the district.” (7) “Magistrate of the district” means the Chief Magistrate in a district:

“The Magistrate.” (8) “the Magistrate” includes the Magistrate of the district, the Magistrate in charge of a division of the district in which division a municipality is constituted, and every Magistrate subordinate to the Magistrate of the district to whom the Magistrate of the district may have made over any duties under this Act:

“Municipality.” (9) “municipality” means any place in which this Act, or any part thereof, is in force:

“Offensive matters.” (10) “offensive matter” means dirt, dung, putrid or putrefying substances, and filth of any kind not included in the term “sewage”:

“Owner.” (11) “owner” includes—

(a) every person who is entitled for the time being to receive any rent in respect of the land with regard to which the word is used, whether from the occupier or otherwise;

(b) a manager on behalf of any such person;

(c) an agent for any such person;

(d) a trustee for any such person:

Provided that no such manager, agent or trustee shall be liable to do anything required by this Act to be done by the owner nor shall he be subject to any fine for omitting to do such thing unless he have sufficient funds in his hands as such manager, agent or trustee to do such thing:

“Part.” (12) “Part” means a Part of this Act:

“Road.” (13) “road” means any road, street, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of way:

“Rubbish.” (14) “rubbish” means broken brick, mortar, broken glass, kitchen or stable refuse, or refuse of any kind whatsoever not included in the term “offensive matter”:

“Sanitary Board.” [1] [(14A) “Sanitary Board” means the persons for the time being appointed, either by name or by official designation, by the Local Government by notification^[2] in the Calcutta Gazette to constitute a Sanitary Board for Bengal:]

[1] Clause (14A) was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 3, in Vol. III of this Code.

[2] For a notification issued under cl. (14A), see the Bihar and Orissa Local Statutory Rules and Orders, 1912, Vol. I, Pt. VI.

(Secs. 7-8.)

(15) "Schedule" means a schedule annexed to this Act: "Schedule."

(16) "section" means a section of this Act: "Section."

(17) "sewage" means night-soil and other contents of privies, drains and cess-pools: "Sewage."

(18) "the Commissioners" means the persons for the time being appointed or elected to conduct the affairs of any municipality under this Act: "The Commissioners."

(19) "year" means a year beginning on the first day of April, or on such other date as may hereafter be fixed for any municipality by the Local Government by notification in the Calcutta Gazette. "Year"

PART I.

OF THE CREATION OF MUNICIPALITIES.

7. [In every place which, in accordance with the provisions of section 3, becomes a municipality under this Act, every person who has been appointed or elected to be a Commissioner for such place under the Bengal Municipal Act, 1876^[1] and who is holding office as such Commissioner at the commencement of this Act, shall be deemed to be a Commissioner duly appointed for such municipality, until such time as the election or appointment of Commissioners in respect of such municipality shall take effect under the provisions of this Act.]

Existing Commissioners and existing rates and taxes temporarily continued.

Ben. Act 5 of 1876.

And] in every such place in which a rate on the annual value of holdings, or a tax upon persons, or a tax upon carriages and animals, or a fee upon the registration of carts, or tolls on roads or on ferries, or a fee under Bengal Act 6 of 1878^[2] may have been levied by the Municipal Commissioners before the commencement of this Act, it shall be deemed that the said rate, tax, fee or tolls have been duly imposed under this Act, and such rate, tax, fee or tolls shall continue to be levied accordingly until the Commissioners at a meeting, with the sanction of the Local Government, shall otherwise direct.

8. Except as is hereinafter otherwise expressly provided, this Act may be extended by the Local Government by notification^[3] published in the Calcutta Gazette, and in the manner prescribed by section 354, to any town or village not being within the limits of the ordinary original

Local Government may extend Act.

^[1] Ben. Act 5 of 1876 was repealed by s. 2 of this Act—see Sch. VI, *post*, p. 627.

^[2] Ben. Act 6 of 1878 (Latrines) was repealed by s. 2 of this Act—see Sch. VI, *post*, p. 627.

^[3] For lists of notifications issued under s. 8, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 9.)

jurisdiction of the High Court at Fort William in Bengal, from such date as may be specified in such notification; and, save as is hereinafter otherwise provided, this Act shall take effect in such town or village on the date so specified, and the said town or village, within the limits mentioned in such notification shall be deemed to be created a municipality for the purposes of this Act:

Provided that, at least six weeks before publishing any notification as aforesaid, the Local Government shall cause to be published in the town or village concerned a notice of its intention to declare the said town or village to be a municipality, unless good reason to the contrary be shown within one month.

Any objections which may be made to the proposed measure shall be duly considered by the Local Government before it causes to be issued the notification declaring the town or village to be a municipality under this Act.

Every notification declaring a town or village to be a municipality shall specify whether the name of such municipality shall, or shall not, be inserted in the first or second Schedule of this Act, and shall further specify, subject to the provisions of section 13, the number of the Commissioners of such municipality.

Notification
of intention
to alter limits
of municipal-
ity.

[¹]9. The Local Government may, on the recommendation of the Commissioners at a meeting, by notification published in the Calcutta Gazette, and in such other manner as it may determine, declare its intention—

- (a) to withdraw any municipality from the operation of this Act; or
- (b) to exclude from a municipality any local area comprised therein and defined in the notification; or
- (c) to include within a municipality any local area contiguous to the same and defined in the notification; or
- (d) to sub-divide any municipality into two or more municipalities; or
- (e) to alter the number of the Commissioners of a municipality.

And the Local Government may, on the recommendation of the Commissioners at a meeting of both or all the municipalities concerned,

[¹] The ss. 9, 9A and 9B were substituted for the original s. 9 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 4, in Vol. III of this Code. The original s. 9 ran thus :—

“9. The Local Government may, on the recommendation of the Commissioners at a meeting, by a like notification, at any time vary the limits of any municipality, or sub-divide any municipality into two or more municipalities, or withdraw any town, village or land from the operation of this Act or alter the number of the Commissioners of such municipality.”

(Secs. 9A-9B.)

by notification similarly published, declare its intention to unite two or more municipalities so as to form one municipality:

Provided that no local area shall be included within a municipality unless the Local Government shall have been satisfied that three-fourths of the adult male population of such local area are chiefly employed in pursuits other than agriculture:

Provided also that whenever it shall appear, either from a general census or from special inquiries undertaken in this behalf, that any municipality does not comply with the conditions laid down in section 10, the Local Government may, of its own motion, declare its intention to withdraw such municipality from the provisions of this Act or to deal with it in the manner stated in this section:

Provided also that where the local area to be excluded or included is a cantonment or part of a cantonment, no notification affecting it shall be published under this section without the previous consent of the Governor General in Council.

[¹]9A. (1) Any rate-payer of a municipality, inhabitant of a local area, or, when the union of two or more municipalities has been recommended, the Commissioners of any one or more of such municipalities, in respect of which a notification has been published under the last preceding section may, should he or they object to the alteration proposed, submit his or their objection in writing, through the District Magistrate to the Local Government within six weeks from the publication of the notification in the Calcutta Gazette; and the Local Government shall take such objection into consideration.

Objection to proposed alteration may be submitted to Local Government.

(2) When six weeks from the publication of the notification have expired and the Local Government has considered the objections (if any) which have been submitted under sub-section (1) of this section, the Local Government may, by notification,^[2] give effect to the proposed alteration or not, as the case may be.

[¹]9B. Whenever two or more municipalities are united, or a municipality is sub-divided, under the two last preceding sections, the Municipal Funds or Fund, and all property vested in the Commissioners of the municipalities or municipality concerned, shall be consolidated, or apportioned in such manner as the Local Government may direct.^[3]

Local Government may apportion and dispose of municipal property upon a sub-division or union of municipalities.

[¹] See foot-note on p. 506, *ante*.

[²] For lists of notifications issued under s. 9A, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] For an order issued under s. 9B, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 10-14.)

Conditions on
which muni-
cipality may
be created

10. This Act shall not be extended to any town or village unless the Local Government shall have been satisfied that three-fourths of the adult male population of such town or village are chiefly employed in pursuits other than agricultural, and that such town or village contains a number of inhabitants, not being less than three thousand, and an average number of not less than one thousand inhabitants to the square mile of the area of such town or village.

11, 12. (*Local Government may unite places to a municipality.—Land between municipality and place united to form part of municipality.*) *Rep. by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 5.*

PART II.

OF THE MUNICIPAL AUTHORITIES.

Of the Constitution of the Municipality.

Number of
Commissioners.

13. The number of Commissioners of a municipality constituted before the passing of this Act shall be such number as may be specified in a notification^[1] of the Local Government, to be issued immediately after this Act comes into force, and to be published in the Calcutta Gazette or in any subsequent notification under section 9.

The number of Commissioners of each municipality created under the provisions of section 8 of this Act shall be such number as is specified in the notification of the creation of such municipality or in any subsequent notification under section 9:

Provided that the number of Commissioners of a municipality shall in no case be more than thirty or less than nine:

Provided, further, that no act of the Commissioners, or of their officers, shall be deemed to be invalid by reason only that the number of the Commissioners did not, at the time of the performance of such act, amount to the number specified in the notifications aforesaid.

Constitution
of body of
Commissioners.

14. Two-thirds of the number of the Commissioners of each municipality, fixed by such notification, shall be elected as hereinafter provided by male persons, resident within the limits of such municipality, who shall have attained the age of twenty-one years.

^[1] For notifications issued under s. 13, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 15.)

The remaining one-third of such Commissioners shall be appointed,^[1] [either by name or by official designation], by the Local Government immediately after the result of the election hereinbefore mentioned shall have been notified to the Local Government, and such appointment shall be deemed to have been made on the date on which such election takes place:

Provided that the number of persons holding salaried offices under the Government, and appointed as Municipal Commissioner, shall not bear a larger proportion than one-fourth to the total number of Commissioners elected and appointed under the provisions of this Part:

Provided also that, in cases where the whole number of Commissioners is not evenly divisible by three or by four, the one-third or one-fourth shall be ascertained by taking the number next below the whole number, which is evenly divisible by three or by four, as the number to be divided.

15. For the purposes of the aforesaid election of Commissioners, the Local Government, with respect to each municipality, shall lay down such rules,^[2] not inconsistent with the provisions of this Act, as it shall think fit in respect of the division, where necessary, of each municipality into wards, and the number of Commissioners to be elected for each of such wards, the qualifications required to entitle any person to vote for a candidate for election, and in respect of the mode of election, ^[3][and the authority who shall decide disputes thereunder]. And the Local Government may at any time cancel any rule made by it under this section:

Rules to be
laid down for
election.

Provided that every male person who is at the time of such election, and has been for a period of not less than twelve months immediately preceding such election, resident within the limits of a municipality, and who—

[⁴](i) has, during the year immediately preceding such election, paid in respect of any rates an aggregate amount of not less than three rupees, or

[¹] The words "either by name or by official designation," in s. 14, were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 6, in Vol. III of this Code.

[²] For lists of rules made under s. 15, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] The words "and the authority who shall decide disputes thereunder," in s. 15, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 7 (1), in Vol. III of this Code.

[⁴] The clauses (i), (ii) and (iii) here printed were substituted for the former clauses by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 3 (1), in Vol. III of this Code.

(Sec. 15.)

[¹](ii) has, during the year aforesaid, paid or been assessed to the tax imposed by Act 2 of 1886[²] (*an Act for imposing a tax on income derived from sources other than agriculture*), or

[¹](iii) being a graduate or licenciate of any University, or having passed the First Arts Examination of the Calcutta University, or the corresponding standard of any other University, or holding a license, granted by any Government Vernacular Medical School, to practise medicine, or holding a certificate authorizing him to practise as a pleader or as a *mukhtar* or as a revenue agent—occupies a holding, or part of a holding, in respect of which there has been paid, during the year aforesaid in respect of any rates, an aggregate amount of not less than three rupees,

shall be entitled to vote at the election of Commissioners of such municipality.

No person who is not entitled to vote at the election of Commissioners of a municipality shall be deemed qualified for election to be a Commissioner of such municipality:

[³][Provided that nothing contained in this section nor in any rules made under the authority of this Act shall be deemed to affect the jurisdiction of the Civil Courts.

“Rates.”
defined.

The term “rates” in this section[⁴] means—

- (a) the tax upon persons and the rate upon the annual value of holdings levied under section 85;
- (b) the tax on carriages and horses levied under Part IV;
- (c) the water-rate on the annual value of holdings levied under Part VII;
- (d) the lighting-rate on the annual value of holdings levied under Part VIII;
- (e) the fee for the cleansing of privies and cess-pools levied under Part IX].

[¹] The clauses (i), (ii) and (iii) here printed were substituted for the former clauses by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 3 (1), in Vol. III of this Code.

[²] The Indian Income-tax Act, 1886. It is printed in the General Acts, 1879-86, Ed. 1909, p. 542.

[³] These clauses in square brackets were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 7 (2), in Vol. III of this Code.

[⁴] This word “means” was substituted for the words “shall be deemed to include” by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 3 (2), in Vol. III of this Code.

(Secs. 16-20.)

[¹] [*Explanation*.—Rules made under this section may reduce, but not raise, any of the sums mentioned in the first proviso thereto, and may declare that any persons who are not referred to in that proviso shall be entitled to vote.]

16. [*The first election of Commissioners under this Act may take place at such time, not being more than six months after this Act comes into force, as the Local Government shall direct.*]

First election of Commissioners.

If the persons entitled to elect Commissioners for any municipality fail [*within the time appointed for the first election under this Act, or*] for every subsequent election within the time prescribed by the rules mentioned in the last preceding section, to elect the whole number of Commissioners allotted for election to such municipality, the Local Government may appoint one or more Commissioners to complete the number so allotted as aforesaid.

On failure of election, Commissioners to be appointed by Government.

17. Every municipality mentioned in the first Schedule of this Act shall be excluded from the operation of the three last preceding sections; and in any municipality so excluded the whole number of the Commissioners shall be appointed by the Local Government [²][either by name or by official designation]; subject, however, to the proviso contained in the third clause of section 14.

Certain municipalities excluded from elective system.

It shall be lawful for the Local Government at any time to remove [³] the name of any municipality from the said Schedule.

18. (*Resignation of Commissioners.*) *Rep. by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 9.*

19. The Local Government may, if it thinks fit, on the recommendation of the Commissioners at a meeting, remove any Commissioner appointed or elected under this Act, if such Commissioner shall have been guilty of misconduct in the discharge of his duties, or of any disgraceful conduct.

Removal of Commissioner by Local Government.

[⁴]**20.** (1) The Commissioner of the Division may remove any Commissioner—

Removal of Commissioner by Commissioner of the Division.

(a) if he refuses to act or becomes incapable of acting, or is declared insolvent, or is convicted of any non-bailable offence; or

[¹] This *Explanation* was added by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 3 (3), in Vol. III of this Code.

[²] These words "either by name or by official designation," in s. 17, were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 8, in Vol. III of this Code.

[³] For a list of orders issued under paragraph 2 of s. 17, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁴] This section was substituted for the original s. 20 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 10, in Vol. III of this Code. The original section ran thus:—

"20. Any Commissioner who, without having obtained permission from the Commissioners at a meeting, shall have omitted to attend six consecutive meetings of the Commissioners, and any Commissioner who shall have been convicted of a non-bailable offence, or shall have been declared insolvent by a competent Court, shall cease to be a Commissioner."

(Secs. 21-23.)

- (b) if he has been declared by notification to be disqualified for employment in the public service; or
- (c) if he absents himself from six consecutive meetings of the Commissioners without having obtained permission from the Commissioners at a meeting; or
- (d) if, in the judgment of the Commissioner of the Division to be recorded in writing, he has become disqualified to continue in office under section 57:

Provided that any Commissioner so removed may appeal to the Local Government.

(2) All acts and proceedings of any Commissioner so removed shall, if done previously to such removal, be valid and effectual to all intents and purposes.

Tenure of office of Commissioner.

21. Every Commissioner shall vacate his office at the end of three years from the date of his appointment or election as such Commissioner.

Certain Commissioners not to be elected or re-elected without consent of Local Government.

[¹]**22.** No Commissioner who has been removed from his office by the Local Government under section 19, or by the Commissioner of the Division under clauses (a) and (b) of sub-section (1) of section 20, may be elected or re-elected a Commissioner without the consent of the Local Government.

Appointment of Chairman.

[²]**23.** (1) The Local Government shall appoint, either by name or by official designation, the Chairman of every municipality mentioned in the second Schedule of this Act.

[¹] This section was substituted for the original s. 22 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 11, in Vol. III of this Code. The original section ran thus :—

“ 22. Any person who has resigned the office of Commissioner under s. 18, or who has ceased to be a Commissioner in consequence of his failure to attend meetings, or in consequence of his insolvency, as provided in s. 20, may be at any time re-appointed or re-elected a Commissioner; but no person removed by the Local Government from his office under s. 19, or who has ceased to be a Commissioner in consequence of being convicted of a non-bailable offence, may be elected or re-elected a Commissioner without the sanction of the Local Government.”

[²] This section was substituted for the original s. 23 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 12, in Vol. III of this Code. The original section ran thus :—

“ 23. The Local Government shall appoint the Chairman of every municipality mentioned in the second Schedule of this Act.

Every municipality, the name of which is not included in the said Schedule, shall, at a meeting, elect one of its Commissioners to be Chairman; or may, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman.

The Local Government may at any time remove a Chairman appointed by it.

The Local Government may at any time remove the name of any municipality from the said Schedule.”

(Secs. 24-25.)

(2) The Commissioners of every municipality, the name of which is not included in the said Schedule, shall, at a meeting, elect one of their number to be Chairman, or may, whenever a vacancy occurs, at a meeting attended by not less than two-thirds of the Commissioners, request the Local Government to appoint a Chairman, and such Chairman shall be appointed by name.

(3) The Local Government may at any time remove a Chairman appointed by it.

(4) The Local Government may at any time remove^[1] the name of any municipality from the said Schedule.

(5) Whenever the name of any municipality is removed from the said Schedule, the office of Chairman shall thereupon become vacant.

24. Notwithstanding anything in section 13 contained, every Chairman appointed under the last preceding section, if not already a Commissioner of the municipality of which he shall have been appointed Chairman, shall, from the date of his appointment, during the term of his office, enjoy all the rights and privileges of a Commissioner of the municipality to which such appointment relates, but shall not be reckoned in calculating the proportions of one-third and one-fourth under the provisions of section 14.

Status and
tenure of
office of
Chairman.

^[2][Except as is otherwise provided in this Act] every Chairman, whether appointed or elected, shall hold office for three years from the date of his appointment or election and shall be eligible for re-appointment or re-election.

A Chairman elected under the last preceding section may at any time be removed from his office by a resolution of the Commissioners in favour of which is not less than two-thirds of the whole number of the Commissioners have given their votes at a meeting specially convened for the purpose.

25. The Commissioners at a meeting shall elect one of their own number to be Vice-Chairman. He shall hold office for three years from the date of his election, and shall be eligible for re-election on the expiration of his term of office.

Election of
Vice-Chairman.

The Vice-Chairman may at any time be removed from his office by a resolution of the Commissioners in favour of which not less than two-thirds of the whole number of the Commissioners shall have given their votes at a meeting specially convened for the purpose.

[¹] For a list of orders issued under s. 23 (4), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] These words "Except as is otherwise provided in this Act," in s. 24, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 13, in Vol. III of this Code.

(Secs. 25A-27.)

Ex officio
appoint-
ments.

[¹]**25A.** If a Chairman or a Commissioner is appointed by official designation, the person for the time being holding the office shall be a Chairman or a Commissioner, as the case may be.

Tenure of
office under
sections 21,
24 and 25.

26. The term of three years mentioned in sections 21, 24 and 25 shall be held to include any period which may elapse between the expiration of the said three years and the date of the [²][first meeting of the body of Commissioners newly appointed and elected at which a quorum shall be present, and any Chairman elected under sections 23 or 27 shall be competent to discharge the duties of his office after his election and pending the orders of the Local Government approving of his election].

Resignation
of Chairman
and Vice-
Chairman.

[³]**26A.** Notwithstanding anything contained in sections 24, 25 and 27A, the Chairman and Vice-Chairman of every municipality shall resign office at the first meeting of the Commissioners newly appointed and elected at which a quorum shall be present.

The meeting shall thereupon proceed—

(a) to elect, or to request the Local Government to appoint a Chairman, and

(b) to elect a Vice-Chairman:

Provided that if the municipality is in the second Schedule of this Act, or if the meeting decides to request the Local Government to appoint a Chairman, the resignation of the Chairman shall not take effect until a new Chairman is appointed.

Leave may be
granted to
Chairman or
Vice-Chair-
man.

[⁴]**26B.** The Commissioners at a meeting may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

Appointment
or election of
Commis-
sioner, Chair-
man or Vice-
Chairman for
unexpired
term of office
or during
term of leave
of absence.

27. If any Commissioner, Chairman or Vice-Chairman shall be unable to complete his full term of office, [⁵][or shall avail himself of leave granted under section 26B,] the vacancy caused by his resignation, or removal or death [⁶][or absence on leave] shall be filled by the appointment or election, as the case may be, of another person; and the person so appointed or elected shall fill such vacancy for the unexpired remainder

[¹] Section 25A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 14, in Vol. III of this Code.

[²] The words and figures in square brackets in s. 26 were substituted for the original words by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 15, in Vol. III of this Code.

[³] Section 26A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 16, in Vol. III of this Code.

[⁴] Section 26B was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 17, in Vol. III of this Code.

[⁵] These words and figures in square brackets, in s. 27, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 18, in Vol. III of this Code.

[⁶] The words "or absence on leave," in s. 27, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 18, in Vol. III of this Code.

(Secs. 27A-29A.)

of the term for which such Commissioner, Chairman or Vice-Chairman would otherwise have continued in office^[1][or during his absence on leave, as the case may be].

[²]27A. (1) A Chairman of a municipality may resign by notifying in writing his intention to do so to the Local Government, and on such resignation being accepted, shall be deemed to have vacated his office. Resignation of Chairman, Vice-Chairman or Commissioner.

(2) A Vice-Chairman or a Commissioner of a municipality may resign by notifying in writing his intention to do so to the Chairman, who shall forthwith lay such notice before the Commissioners at a meeting, and on such resignation being accepted by such Commissioners, shall be deemed to have vacated his office.

28. The Chairman and Vice-Chairman of any municipality may, if the Commissioners think fit, receive such allowances out of the municipal fund as shall from time to time be fixed at a meeting by the Commissioners. Allowances of Chairman and Vice-Chairman.

[³][And in the case of a salaried Chairman or Vice-Chairman, the Commissioners may grant such leave allowances as they may from time to time determine at a meeting :

Provided that the allowance so granted, together with the acting allowance, if any, of the officiating incumbent shall not exceed the salary fixed for the office].

29. The Commissioners shall, in the name of their Chairman, by the description of "the Chairman of the Municipal Commissioners of ,", be a body corporate, and have perpetual succession, and a common seal, and in such name shall sue and be sued. Incorporation of Commissioners.

Such common seal shall have the name of the municipality engraved thereon in legible character in the English language, and also in the vernacular of the district.

[⁴]29A. (1) The powers and functions of the Local Government under sections 30, 255, 259 and 331 may be delegated^[5] by the Local Government to Commissioners of Divisions. Delegation of certain powers and functions of Local Government.

[¹] The words "or during his absence on leave, as the case may be," in s. 27, were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 18, in Vol. III of this Code.

[²] Section 27A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 19, in Vol. III of this Code.

[³] These clauses in square brackets in s. 28 were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 20, in Vol. III of this Code.

[⁴] Section 29A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 21, in Vol. III of this Code.

[⁵] For an order issued under s. 29A, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 30-31.)

(2) In regard to powers or functions delegated to them under this section, Commissioners of Divisions shall have the same authority as the Local Government, and the delegation shall continue until revoked by the Local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid, and may be made generally in regard to all the municipalities within the Division of the Commissioner, or it may be made particularly in regard to certain municipalities only.

(4) The delegation may be by name or by official designation, and shall, in each case, be notified in the Calcutta Gazette.

Of the Property of the Commissioners.

Public roads,
etc., vested in
the Commis-
sioners.

30. All roads, [¹including the soil, and all] bridges, tanks, *ghâts*, wells, channels and drains in any municipality (not being private property and not being maintained by Government or at the public expense), now existing, or which shall hereafter be made, and the pavements, stones and other materials thereof, and all erections, materials, implements and other things provided therefor, shall vest in, and belong to, the Commissioners.

But the Local Government [²] may, from time to time, by notification, [³] exclude any road, bridge or drain from the operation of this Act [⁴or of any specified section of this Act], and may cancel such notification wholly or in part:

Provided that, if the cost of the construction of the work shall have been paid from the municipal fund, such work shall not be excluded from the operation of this Act [⁴or of any specified section of this Act] without the consent of the Commissioners at a meeting.

Commis-
sioners may,
with consent
of owners,
take over and
repair roads,
etc.

31. The Commissioners at a meeting may agree with the person in whom the property in any road, bridge, tank, *ghât*, well, channel or drain is vested to take over the property therein or the control thereof, and after such agreement may declare, by notice in writing put up

[¹] The words "including the soil, and all," in s. 30, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 22, in Vol. III of this Code.

[²] As to the delegation to Commissioners of Divisions of the Local Government's power, see s. 29A, p. 515, *ante*.

[³] For a list of notifications issued under para. 2 of s. 30, see the Bihar and Orissa Statutory Rules and Orders, Vol. I, Pt. VI.

The District Fund, constituted under the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), cannot be applied to the repair, etc., of roads within municipalities until such roads are expressly excluded from the operation of the present Act by notification under s. 30 thereof—see proviso (2) to s. 53 of the former Act, *post*, p. 672.

[⁴] These words "or of any specified section of this Act," in s. 30 were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 22, in Vol. III of this Code.

(Secs. 32-35.)

thereon or near thereto, that such road, bridge, tank, *ghât*, well, channel or drain has been transferred to the Commissioners.

Thereupon the property therein, or the control thereof (as the case may be), shall vest in the Commissioners, and such road, bridge, tank, *ghât*, well, channel or drain shall thenceforth be repaired and maintained out of the municipal fund.

32. Every hospital, dispensary, school, rest-house, *ghât* and market, not being private property or the property of a religious institution or society, and all medicines, furniture and other articles appurtenant thereto, not being such property, which at and after the commencement of this Act shall be found within any municipality, may, by order ^[1] of the Local Government duly published on the spot, be vested in the Commissioners of such municipality; and thereupon all endowments or funds belonging thereto shall be transferred to, and vested in, such Commissioners as trustees for the purposes to which such endowments and funds were lawfully applicable at the time of such transfer:

Existing hospitals, schools, rest-houses, etc., may be vested in the Commissioners.

Provided that no such order shall be published until one month after notice of the intention to transfer such property shall have been published in the Calcutta Gazette, and within the municipality in the vernacular language of the district.

33. If the Commissioners at a meeting shall, after publication of the notice mentioned in the last preceding section, object to the transfer to themselves of any hospital, dispensary, school, rest-house, *ghât* or market, on the ground that their funds cannot bear the charge, then such transfer shall not be made save under such conditions as the Commissioners at a meeting may agree to accept.

Transfer to be conditional in certain cases.

34. The Commissioners at a meeting may purchase or take on lease any land for the purposes of this Act, and may sell, let, exchange or otherwise dispose of any land not required for such purposes.

Power to purchase, lease and sell lands.

35. The Local Government, on the application of the Commissioners at a meeting that any land be acquired for the purposes of this Act, may, on being satisfied that the Commissioners are in a position to pay for such land either at once or in such instalments as the Local Government may think proper, notify, under the provisions of the Land Acquisition Act, 1870^[2] or any similar Act for the time being in force for the acquisition of land for public purposes, that such land is required for a public purpose, and may cause such land to be acquired

Land may be taken up under Land Acquisition Act, 1894.

[1] For a list of orders issued under s. 32, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1909, p. 364.

(Secs. 36-37B.)

under the provisions of such Act; and, on payment by the Commissioners of the compensation awarded under such Act, the land shall vest in them for the purposes of this Act.

Commis-
sioners to pay
cost of such
land.

36. The Commissioners shall be bound to pay to the Government the cost of any land which may be acquired for them on their application under the provisions of the last preceding section.

Execution of
contracts.

37. The Commissioners may enter into and perform any contract necessary for the purposes of this Act.

Every contract made on behalf of the Commissioners of a municipality in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Commissioners at a meeting, and shall be in writing, and signed by at least two of the Commissioners, one of whom shall be the Chairman or Vice-Chairman, and shall be sealed with the common seal of the Commissioners.

Unless so executed, such contract shall not be binding on the Commissioners.

Formation of
Joint-Com-
mittees.

[¹]**37A.** The Commissioners of any municipality may join with the Commissioners of any other one or more municipalities, or with any District Board[²] or with any Cantonment Authority,[³] or with more than one such Board or Cantonment Authority in constituting out of their respective bodies a Joint-Committee, consisting of not more than two members from each of such bodies, for any purpose in which they are jointly interested, and in delegating to any such Joint-Committee any power which might be exercised by either or any of the municipal bodies, or District Boards, or Cantonment Authorities concerned; and such Joint-Committee may from time to time frame rules as to the proceedings of any such Joint-Committee, and as to the conduct of correspondence relating to the purpose for which such Joint-Committee is constituted.[⁴]

Voluntary
introduction
of a water-
supply or
system of
drainage.

[¹]**37B.** Whenever it appears expedient to the Commissioners of any municipality, or to the Commissioners of a municipality acting conjointly with the Commissioners of any other municipality or municipalities, or with one or more of any of the local authorities specified

[¹] Sections 37A to 37M were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 23, in Vol. III of this Code.

[²] As to District Boards, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), *post*, p. 649.

[³] As to Cantonment Authorities, see the Cantonments Act, 1910 (15 of 1910).

[⁴] For a similar section applying to Municipal Commissioners, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 30, *post*, p. 660.

As to the transfer to Joint-Committees of High English schools in municipalities, see the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 64, *post*, p. 675.

(Secs. 37C-37E.)

in the last preceding section, to provide a supply of water for domestic purposes, or to introduce a system of drainage,^[1] they may cause to be prepared a scheme and estimates of the cost of the works necessary for the purpose, together with such plans and specifications of the same as may be necessary, and may submit the same to the Local Government through the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain is situated.

[²]37C. The Local Government may refer such scheme, plans, specifications and estimates to the Sanitary Board, who, in consultation with a Committee consisting of one member to be appointed by the municipality or by each of the municipalities or other local authorities concerned, and one member to be appointed by the Commissioner of the Division within which the area, or the larger portion of the area, which it is proposed to supply with water or to drain is situated,

Sanitary Board with a Committee to consider and report on scheme.

shall consider the same and report thereon to the Local Government.

[²]37D. The Local Government shall consider the report, together with the plans, specifications and estimates, and may thereupon—

Local Government may sanction modify or refer scheme.

- (a) sanction the scheme, or
- (b) add to, alter or modify the scheme and sanction the same so added to, altered or modified, or
- (c) add to, alter or modify the scheme and refer the same so added to, altered or modified, together with the plans, specifications and estimates, to the Sanitary Board, who, in consultation with the said Committee, shall further consider the scheme so added to, altered or modified, and report thereon to the Local Government.

[²]37E. (1) When the scheme recommended for sanction extends to two or more municipalities or other local areas, the Sanitary Board, acting in consultation with the Committee, as constituted under section 37C, shall include in their report proposals for distributing the cost of the scheme, including its maintenance and working expenses, between or among the local authorities benefited.

Distribution of costs of scheme.

(2) In the case of municipalities, such distribution shall be in proportion to the income derived by each from taxation, allowance being made for any difference in the degree of benefit conferred on each, such as, in the case of a water-supply scheme, the pressure at which the water

[¹] For an alternative procedure, see the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), ss. 6, 25, in Vol. III of this Code.

[²] See foot-note [¹] on p. 318, ante.

(Secs. 37F-37H.)

is delivered, the facilities for procuring water, the distance from the head-works, and the like.

Approved
scheme to be
published.

[¹]**37F.** (1) When the scheme has been approved by the Local Government, there shall be published, in the Calcutta Gazette and locally in accordance with the provisions of section 354, the following particulars:—

- (a) a general description of the scheme;
- (b) an estimate of the cost of carrying it out;
- (c) an estimate of the cost of maintaining it;
- (d) the source from which the cost will be met;
- (e) the amount of the loan, if any, the annual instalments by which it will be repayable, and the number of years required to repay it;

and, where several local authorities are concerned,

- (f) the distribution of the loan;
- and

(2) where the scheme is for providing or improving the water-supply, the following additional particulars in respect of each municipality concerned:—

- (a) the total annual charge to be incurred by reason of the water-supply and to be met by a water-rate,
- (b) the percentage of such water-rate on the annual value of holdings;
- (c) the average incidence of such water-rate per head of the population.

Sanction of
scheme.

[¹]**37G.** After the expiry of two months from the date of such publication, and after considering any objections or suggestions that may be submitted, the Local Government may sanction or reject the scheme as published, or may refer it, with such suggestions as it may think fit, to the Sanitary Board, who, in consultation with the same Committee as aforesaid, shall consider the scheme with a view to its amendment, and when the scheme shall have been so considered, it shall be forwarded to the Local Government, and the provisions of this and the last preceding section shall be applied.

Scheme to be
carried out by
municipali-
ties.

[¹]**37H.** When a scheme has been sanctioned by the Local Government under the last preceding section, the Commissioners of the municipality or municipalities, or the local authorities concerned shall, if the rate, and other monies to be collected, received or recovered for or

[¹] See foot-note [¹] on p. 518, *ante*.

(Secs. 37I-37K.)

in respect of the water-supply or drainage system be sufficient for the purpose, proceed to carry it out, and where two or more municipalities or local authorities are concerned, a Joint-Committee may be formed for that purpose according to rules to be framed in this behalf by the Local Government.

[¹]37I. The Local Government may order the works specified in any scheme, plans, specifications and estimates, or any portion thereof, to be executed by an officer to be appointed by it, and shall fix the remuneration of such officer (provided that the cost of the scheme as sanctioned be not exceeded): and may specify a period within which the work shall be completed, and may extend such period from time to time as may be necessary.

Local Gov-
ernment may
appoint an
officer to
execute the
works.

[¹]37J. The cost of making plans, specifications and estimates, and the travelling expenses incurred by the members of the committee in attending the meetings of the Sanitary Board for the consideration of the scheme, and the cost of carrying out the scheme if the same be proceeded with, may be advanced from the public funds on the security of the fund or funds of the municipality or municipalities or other local authority or authorities concerned, and shall be recoverable under [²][the Local Authorities Loan Act, 1879,] and all the provisions of that Act, and the rules made under it referring to the recovery of loans, shall be applicable to such advances.

Cost of the
scheme may
be advanced
from the
public funds.

11 of 1879.

[¹]37K. (I) When it appears to the Local Government that the Commissioners of any municipality, or the Commissioners of a municipality, acting conjointly with the Commissioners of any other municipality or municipalities or with one or more of any other local authorities specified in section 37A, should be required to provide a supply of water for domestic purposes, or to introduce a system of drainage, it may call upon such Commissioners to show cause within a specified time why they should not be so required, and the Local Government shall consider any objections which may be submitted by the Commissioners, and if it considers such objections insufficient, it may, after publishing in the Calcutta Gazette a full statement of the reasons which have led to action being taken, by an order in writing, fix a time within which the Commissioners shall submit such a scheme, plans, specifications and estimates as are referred to in section 37B, in the manner therein provided :

Compulsory
introduction
of water-
supply or
system of
drainage.

[¹] See foot-note [¹] on p. 518, *ante*.

[²] The words and figures "the Local Authorities Loan Act, 1879," were substituted for the words and figures "the Loans Act of 1879" by the Amending Act, 1897 (5 of 1897), Sch. II—see Vol. I of this Code. The Local Authorities Loan Act, 1879, has since been repealed and re-enacted by the Local Authorities Loans Act, 1914 (9 of 1914), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1909, p. 579.

(Secs. 37L-38.)

Provided that when the Commissioners of one municipality are required to show cause, as aforesaid, a resolution against the introduction of such scheme passed at a meeting specially convened for the purpose, in favour of which a majority of not less than two-thirds of the whole number of Commissioners shall have voted, or when the Commissioners of two or more municipalities are required to act conjointly with each other for that purpose, a similar resolution passed by the Joint-Committee constituted under section 37A, in favour of which a majority of not less than two-thirds of the total number of votes allotted to such municipalities and apportioned to each of them, according to their respective incomes shall have been recorded, shall be final, and in either case no further action shall be taken by the Local Government under the provisions of this section.

(2) When the said order has been complied with, the provisions of sections 37C to 37J inclusive shall apply.

(3) If default is made in complying with the said order, the provisions of section 64 shall apply:

Provided that in the case of a municipality mentioned in the first Schedule and not required to act conjointly with any other municipality or local authority, if within two months from the date of the publication of the particulars of any such scheme in the Calcutta Gazette under section 37F, a petition is presented to the Local Government by a majority of not less than two-thirds of the registered rate-payers of a municipality objecting to the compulsory introduction of such scheme into such municipality, the Commissioners thereof shall not be compelled to carry out such scheme.

Application
of part VII.

[¹] **37L.** The provisions of Part VII shall, notwithstanding anything in section 86, 220, 221, 222, 223, 279 or 287, apply to every municipality in which a water-supply is provided under section 37K.

Chairman not
to exercise
powers of
Commis-
sioners.

[²] **37M.** The powers conferred on the Commissioners by sections 37A to 37L inclusive shall not be exercised by the Chairman under section 44.

Of the Mode of transacting the Business of the Municipality.

Commis-
sioners
to meet
ordinarily
once a month.

38. The Commissioners shall meet for the transaction of business (if there be any business to be transacted) at their office, or at some

[¹] The original s. 37L was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 23. The present s. 37L was substituted for it by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 4, in Vol. III of this Code. The original section ran thus:—

“37L. The provisions of Part VII shall apply to any municipality in which a water-supply shall have been provided.”

[²] See foot-note [¹] on p. 518, *ante*.

(Secs. 39-42.)

other convenient place, at least once in every month, and as often as a meeting shall be called by the Chairman, or, in his absence, by the Vice-Chairman.

If there shall be no business to be laid before the Commissioners at any monthly meeting, the Chairman shall, instead of calling the meeting, give notice of the fact to each Commissioner three days before the date which is appointed for the monthly meeting.

[¹][Accidental omission to serve notice of a meeting on any Commissioner shall not affect the validity of a meeting.]

39. The Chairman, or, in his absence, the Vice-Chairman shall call a special meeting on a requisition signed by not less than three of the Commissioners.

[²][If the Chairman or the Vice-Chairman fails to call a special meeting within thirty days after any such requisition has been made, the meeting may be called by the persons who signed the requisition.]

40. The Chairman, or, in his absence, the Vice-Chairman shall preside at every meeting, and, in the absence of both the Chairman and Vice-Chairman, the Commissioners shall choose some one of their number to preside.

41. All questions which may come before the Commissioners at a meeting shall be decided by a majority of votes, unless otherwise provided in this Act.

In case of equality of votes, the President shall have a second or casting vote.

42. No business shall be transacted at any meeting of the Commissioners unless such meeting has been called by the Chairman or Vice-Chairman, [³][or, under section 39, by persons signing a requisition,] nor unless a quorum shall be present.

A quorum shall be, in any municipality in which the Commissioners are more than fifteen, five;

in any other municipality, a number being not less than one-third of the entire number of Commissioners.

If, at the time appointed for a meeting, or within one hour thereafter, a quorum is not present, the meeting shall stand adjourned to

[¹] This paragraph in square brackets in s. 38 was added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 24, in Vol. III of this Code.

[²] This paragraph in square brackets in s. 39 was added by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 5, in Vol. III of this Code.

[³] The words and figures "or, under s. 39, by persons signing a requisition," in s. 42, were inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 6 (1), in Vol. III of this Code.

(Secs. 43-46.)

some future day to be appointed by the ^[1][President], and three days' notice of such adjourned meeting shall be given. The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Minutes of
Proceedings.

43. Minutes of the proceedings of all meetings of the Commissioners shall be entered in a book to be kept for the purpose, and shall be signed by the President of the meeting, and such book shall be open to the inspection of the tax-payers.

Powers of
Chairman.

44. The Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorized thereby, exercise all the powers vested by this Act in the Commissioners:

Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Commissioners at a meeting, or exercise any power which is directed to be exercised by the Commissioners at a meeting.

Chairman
may delegate
his duties or
powers to
Vice-Chair-
man.

45. The Chairman may, by a written order, delegate to the Vice-Chairman all or any of the duties or powers of a Chairman as defined in this Act, subject to such restrictions as may seem fit to him, and may at any time by a written order withdraw or modify the same:

Provided that nothing done by the Vice-Chairman which might have been done under the authority of a written order from the Chairman, shall be invalid for want of or defect of such written order, if it be done with the express or implied consent of the Chairman previously or subsequently obtained.

Appointment
of subordi-
nate officers.

^[2]**46.** The Commissioners at a meeting shall from time to time decide whether a paid Secretary, Engineer, * ^[2] Health officer ^[3][or Assessor] is required or not, and what number of subordinate officers; servants and collectors of taxes or tolls may be necessary for the municipality, and shall from time to time fix the salaries to be paid to such persons respectively out of the municipal fund, and allowances to be granted to such persons during absence on leave.

Subject to the scale of establishment decided upon by the Commissioners under this section, the Chairman shall have power to appoint such persons as he may think fit, and from time to time to remove such persons and appoint others in their places:

^[1] The word "President," in s. 42, was substituted for the words "Chairman or Vice-Chairman" by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 6 (2), in Vol. III of this Code.

^[2] The word "or," in s. 46, was repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 25, and is omitted.

^[3] The words "or assessor," in s. 46, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 25, in Vol. III of this Code.

(Secs. 47-50.)

Provided that no person shall be appointed to an office the salary of which is fifty rupees *per mensem* or upwards, without the sanction of the Commissioners at a meeting, and that no officer, whose salary is more than twenty rupees *per mensem*, shall be dismissed without such sanction.

47. The Commissioners at a meeting, specially convened for the purpose, may, by a resolution in favour of which not less than two-thirds of the Commissioners present at such meeting shall have voted, from time to time make rules^[1] for—

Commissioners may frame rules for pensions and gratuities or for the creation of a provident or annuity fund.

- (a) the granting of pensions and gratuities out of the municipal fund; or
- (b) the creation and management of a provident or annuity fund for compelling contribution thereto on the part of their officers and servants, and for supplementing such contribution out of the municipal fund;

and may repeal or alter such rules.

The Commissioners at a meeting may, from time to time, in accordance with such rules for the time being in force, grant such pensions or gratuities, or grant allowances or annuities out of such provident or annuity fund to any of their officers or servants, as they may see fit.

48. In the case of a Government official employed by the Commissioners, the Commissioners may—

Pension, etc., to Government officials.

- (1) if his services are wholly lent to them, contribute to his pension, gratuities and leave allowances in accordance with the rules of the Government Civil Pension and Leave Codes^[2] for the time being in force; and
- (2) if he devotes only part of his time to the performance of duties in behalf of the Commissioners, contribute as above in such proportion as may be determined by the Local Government.

49. The Commissioners may take such security as they may think proper from any officer or servant in their employ.

Security from officers or servants.

Of Ward Committees.

50. The Commissioners at a meeting may divide any municipality into wards, and thereupon appoint, or cause to be elected for each ward, not less than three proper persons, whether such persons be or be not

Appointment or election of Ward Committees.

[¹] For a list of rules made under s. 47, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] See now the Civil Service Regulations, 5th edition, 1910.

(Secs. 51-56.)

Commissioners for the time being, to be members of the Ward Committee; and the Commissioners at a meeting may define the limits of the ward for which any Ward Committee may be appointed or elected.

Commissioners may lay down rules for election.

51. The Commissioners at a meeting may lay down rules, not being inconsistent with the provisions of this Act, in respect of the qualifications required to entitle any person who is not a Commissioner to stand as a candidate for such election, and to entitle any person to vote for any candidate, and in respect of the mode of election.

And the Commissioners may at any time cancel any rule made by them under this section for such election.

Election of Chairman and Vice-Chairman of Ward Committee.

52. Each Ward Committee may, for each year if it sees fit, elect its own Chairman and Vice-Chairman (if necessary) from among its own number:

Provided that, if one or more Commissioners are members of the Ward Committee, the Chairman of the Ward Committee shall be a Commissioner.

Commissioners may delegate power to Ward Committee.

53. The Commissioners at a meeting may delegate to a Ward Committee such of the powers of Commissioners under this Act as to them may seem fit; and such Ward Committee within the limits of its ward, as defined by the Commissioners at a meeting, may exercise all or any of such powers, and shall be liable to all the obligations imposed by this Act on Commissioners in respect of such powers.

All acts done, orders issued and assessments made, by Ward Committees, shall be subject to the control and revision of the Commissioners at a meeting, who may at any time withdraw all or any of such powers.

Certain sections applicable to transaction of business by Ward Committees. Removal, resignation and appointment of members.

54. The provisions of sections 38 to 45 (both inclusive) shall, as far as possible, be applicable to the transaction of business by Ward Committees, and the Commissioners shall sanction the establishment of Ward Committees in accordance with the provisions of section 46.

55. All questions regarding the removal, resignation and appointment of members of Ward Committees shall be settled by the Commissioners at a meeting.

Liability of Commissioners and Ward Committees.

Personal liability of Commissioner or member of Ward Committee.

56. No Commissioner or member of a Ward Committee shall be personally liable for any contract made, or expense incurred, by or on behalf of the Commissioners.

Every Commissioner or member of a Ward Committee shall be personally liable for any wilful misapplication of money entrusted to the

(Secs. 57-58.)

Commissioners to which he shall knowingly have been a party, and he shall be liable to be sued for the same.

57. No Commissioner or member of a Ward Committee shall have, directly, or indirectly, * * *^[1] any share or interest in any contract^[2] [of any kind whatsoever to which the Commissioners are a party, or shall hold any office of profit under them,] and if any Commissioner shall have such share or interest^[3] [or shall hold such office] he shall thereby become disqualified to continue in office as Commissioner, and shall be liable to a fine not exceeding five hundred rupees:

Disqualifica-
tion of
Commis-
sioners
having share
or interest in
contracts.

^[4] [Provided that] a Commissioner shall not be so disqualified by reason only of his having a share or interest in—

- (a) a contract entered into between the Commissioners and any incorporated or registered company of which such Commissioner is a member or shareholder; or
- (b) any lease, sale or purchase of land, or any agreement for the same; or
- (c) any agreement for the loan of money, or any security for the payment of money only; or
- (d) any newspaper in which any advertisement relating to the affairs of the municipality is inserted.

But no such Commissioner shall act as Commissioner or member of a Ward Committee, or take part in any proceedings relating to any matter in which he is so interested.

^[5] 58. No Commissioner or member of a Ward Committee shall vote on any matter affecting his own conduct or pecuniary interest, or on any question which regards exclusively the assessment of himself, or the valuation of any property in respect of which he is directly or indirectly in any way interested, or of any property of or for which he is manager or agent, or his liability to any tax.

Commis-
sioners
disqualified
from
voting on
certain
questions.

^[1] The words "by himself or through others," in s. 57, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 26, and are omitted.

^[2] These words in square brackets, in s. 57, were substituted for the words "made with the Commissioners" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 26, in Vol. III of this Code.

^[3] The words "or shall hold such office," in s. 57, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 26, in Vol. III of this Code.

^[4] The words "Provided that," in s. 57, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 26, in Vol. III of this Code.

^[5] This section was substituted for the original s. 58 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 27, in Vol. III of this Code. The original s. 58 ran as follows :—

"58. No Commissioner or member of a Ward Committee shall vote on any question which regards exclusively the assessment of himself, or the valuation of his property, or of the property for which he is manager or agent or his liability to any tax."

(Secs. 59-63.)

Control.

Certain
resolutions
subject to
approval of
Government.

59. All resolutions passed by the Commissioners under the following sections, that is to say:—

- (a) under section 23 ^[1][or 27], for the election of a Chairman;
- (b) under section 24, for the removal of a Chairman from office;
- (c) under section 28, for the grant of allowances to a Chairman or Vice-Chairman;
- (d) under section 47, for the making, repeal or alteration of rules for the grant of pensions or gratuities, or for the creation and management of provident or annuity funds;

shall be subject to the approval of the Local Government.

Copy of
minutes to be
sent to
Magistrate.

60. A copy of the minutes of the proceedings of all meetings of the Commissioners referred to in section 43 shall be forthwith forwarded by the Commissioners to the Magistrate of the district.

Sanction to
appointment
of subordinate
officers.

61. The appointment by the Commissioners of subordinate officers, as provided by section 46, shall be subject to the following rules:—

- (a) no appointment, of which the salary is two hundred rupees *per mensem* or upwards, shall be created or abolished, without the sanction of the Local Government;
- (b) no person shall be appointed to, or dismissed from, an office, the salary of which is one hundred rupees *per mensem* or upwards without the sanction of the Commissioner of the Division.

Magistrate's
power of
inspection.

62. The Magistrate of the district, or the Magistrate in charge of the division of the district in which a municipality is situate, may enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by the Commissioners, or any work in progress under their direction; and may call for and inspect any document which may be, for the purposes of this Act, in the possession or under the control of the Commissioners.

Power to
suspend
action under
Act.

63. The Commissioner of the Division or the Magistrate of the district may, by order in writing, suspend within the limits of the division or district (as the case may be) the execution of any resolution or order of the Commissioners of any municipality, or prohibit the doing within those limits of any act which is about to be done, or is being done, in pursuance of, or under cover of, this Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law, or the execution of the resolution or order, or the doing of the act, is

[1] The word and figures "or 27," in s. 59, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 28, in Vol. III of this Code.

(Secs. 64-66.)

likely to lead to a serious breach of the peace, or to cause serious injury or annoyance to the public, or to any class or body of persons.

When a Commissioner or Magistrate makes any order under this section, he shall forthwith forward a copy thereof, with a statement of his reasons for making it, to the Local Government, which may thereupon rescind the order or direct that it continue in force with or without modification, permanently or for such period as it thinks fit.

64. If at any time it appears to the Local Government, on the report of the Magistrate of the district or of the Commissioner of the Division, that the Commissioners of any municipality have made default in performing any duty imposed on them by or under this or any other Act, the Local Government may, by an order in writing, fix a time for the performance of that duty.

Powers of Local Government in case of default.

If that duty is not performed within the period so fixed, the Local Government may appoint the Magistrate of the District to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

If the expense is not so paid, the Magistrate, with the previous sanction of the Local Government, may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible from the balance, in priority to any or all other charges against the same.

65. If, in the opinion of the Local Government, the Commissioners of any municipality are not competent to perform, or persistently make default in the performance of the duties imposed on them by or under this Act or otherwise by law, or exceed or abuse their powers, the Local Government may, by an order published, with the reasons for making it, in the Calcutta Gazette, declare such Commissioners to be incompetent, or in default, or to have exceeded or abused their powers, as the case may be, and supersede them for a period to be specified in the order.

Power to supersede Commissioners in case of incompetency, default or abuse of powers.

66. When an order of supersession shall have been passed under the last preceding section, the following consequences shall ensue:—

Consequences of supersession.

- (a) all the Commissioners shall, as from the date of the order, vacate their offices as such Commissioners;
- (b) all the powers and duties of the Commissioners^[1] shall, during the period of supersession, be exercised and per-

[¹] Section 2 of the Bengal Municipal (Amendment and Validation) Act, 1910 (Ben. Act 2 of 1910), in Vol. III of this Code, run thus:—

“2. The expression “all the powers and duties of the Commissioners” in clause (b) of s. 66 of the Bengal Municipal Act, 1884, shall include, and shall be deemed always to have included, powers and duties which may be exercised and performed at a meeting of the Commissioners, as well as powers and duties which may be exercised and performed otherwise than at such a meeting.”

(Secs. 66A-67.)

formed by such person or persons as the Local Government may direct;

- (c) all property vested in such Commissioners shall, during the period of supersession, vest in the Government.

On the expiration of the period of supersession specified in the order, it shall be lawful for the Local Government to direct^[1] that the municipality shall be entered in the first Schedule or the second Schedule, or in both the first and second Schedules; but otherwise the Commissioners shall be re-established by appointment and election, and the persons who vacated their offices under clause (a) shall not be deemed disqualified for appointment or election.

Disputes.

[²]66A. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between the Commissioners of two or more municipalities constituted under this Act, or between the Commissioners of any such municipality and a District Board, or Cantonment Authority, the matter shall be referred—

- (a) to the District Magistrate, if the local authorities concerned are in the same district; or
- (b) to the Commissioner or Commissioners of the Division or Divisions, if the local authorities concerned are in different districts; or
- (c) to the Local Government, if the local authorities concerned are in different Divisions and the Commissioners of those Divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final.

(3) If, in the case mentioned in clause (a), the District Magistrate is a member of one of the local authorities concerned, his functions under this section shall be discharged by the Commissioner of the Division.

PART III.

OF THE MUNICIPAL FUND.

What shall constitute the Municipal Fund.

67. All sums received by the Commissioners, and all fines paid or levied in any municipality under this Act, and all other sums which,

[¹] For orders issued under s. 66, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] Section 66A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 29, in Vol. III of this Code.

(Secs. 68-69.)

under the sanction of Government, may be transferred to the Commissioners, shall constitute a fund which shall be called the "Municipal Fund," and shall, together with all property of every nature or kind whatsoever which may become vested in the Commissioners, be under their control, and shall be held by them in trust for the purposes of this Act.

68. [1][Except as is otherwise provided in this Act,] the Commissioners shall set apart and apply annually out of the municipal fund—

Payment on account of interest on loans and establishment.

(a) firstly, such sum as may be required for the payment of the interest which may fall due on any loan contracted by the Commissioners;

(b) secondly, such sum as they are by this Act required to provide for payment of their own establishment, including such contributions as are referred to in section 48;

(c) thirdly, such sum as the Local Government may direct towards the cost of audit, * *[2] towards the cost of establishments in any office of account or in any treasury [3][and towards the salary of any special officer who may be appointed under section 82]:

Provided that the total amount which any municipality may be required to pay under clause (c) [4][otherwise than as the salary of a special officer appointed under section 82] shall not in any year exceed two *per centum* on the amount of the municipal income for such year.

[5]69. (1) After the said sums have been set apart under section 68, the Commissioners at a meeting shall, as far as the municipal fund permits, from time to time cause roads, bridges, tanks, *ghâts*, wells, channels, drains and privies, being the property of the Commissioners, to be maintained and repaired, and the municipality to be cleansed;

Purposes to which municipal fund is applicable.

and may, except as is otherwise provided in this Act, and subject to such rules[6] and restrictions as the Local Government may from time

[1] The words "Except as is otherwise provided in this Act," in s. 68, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 30 (1), in Vol. III of this Code.

[2] The word "and," in s. 68 (c) was repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 30 (2), and is omitted.

[3] These words and figures in square brackets in s. 68 (c) were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 30 (2), in Vol. III of this Code.

[4] These words and figures in square brackets in the proviso to s. 68 were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 30 (3), in Vol. III of this Code.

[5] The ss. 69, 69A and 69B were substituted for the former s. 69 by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 7, in Vol. III of this Code.

[6] For lists of rules made under s. 69, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 69.)

to time prescribe, apply the municipal fund to any of the following purposes within the municipality, that is to say,—

- (i) the construction, maintenance and improvement of roads, tramways, bridges, squares, gardens, tanks, *ghâts*, wells, channels, drains and privies;
- (ii) the supply of water, and the lighting and watering of roads;
- (iii) the erection and maintenance of offices and other buildings required for municipal purposes;
- (iv) the construction and repair of school-houses, either wholly or by means of grants-in-aid;
- (v) the establishment and maintenance of schools, either wholly or by means of grants-in-aid;
- (vi) the establishment and maintenance of hospitals and dispensaries;
- (vii) the promotion of vaccination;
- (viii) the acquiring and keeping of open spaces for the promotion of physical exercise and education;
- (ix) the training and employment of female medical practitioners and of veterinary practitioners;
- (x) the establishment and maintenance of veterinary dispensaries for the reception and treatment of horses, cattle and other animals;
- (xi) the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals;
- (xii) the improvement of the breed of horses, cattle and asses, and the breeding of mules;
- (xiii) the establishment and maintenance of free libraries;
- (xiv) the maintenance of a fire-brigade;
- (xv) other works of public utility calculated to promote the health, comfort or convenience of the inhabitants;
- (xvi) the establishment and maintenance of benches for the trial of offences under this Act or any by-laws made thereunder, and
- (xvii) generally, to carrying out the purposes of this Act:

Provided that no portion of the municipal fund shall be applied to any of the purposes specified in clauses (viii) to (xiii) (both inclusive), unless a majority of the Commissioners present at the meeting are satisfied that the other purposes specified or referred to in this sub-section, or such of them as the majority consider it necessary to carry out, have been sufficiently provided for.

(Secs. 69A-70.)

(2) *The Municipal Fund shall also be applicable to the payment, at such rates as the Local Government may from time to time direct, of travelling expenses incurred by any of the Commissioners in attending meetings convened under the rules made by the Local Government in pursuance of sub-section (4) of section 1 of the Indian Councils Act, 1892^[1] for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council.*

55 & 56 Vict.,
c. 14.

(3) The Commissioners may do all things, not being inconsistent with this Act, which may be necessary to carry out the purposes of this section.

[²]**69A.** (1) The Commissioners shall cause to be kept, for each hospital and dispensary vested in them, accounts, in such form as may be prescribed by rules made by the Local Government, showing—

Receipts and
expenditure
on account
of hospitals
and dispen-
saries.

- (a) all endowments, funds and contributions received by them,
- (b) all sums directed by them to be applied to establishment or maintenance, and
- (c) all expenditure incurred by them.

(2) No money which has been received by the Commissioners on account of any hospital or dispensary, or directed by them to be applied to the establishment or maintenance of any hospital or dispensary, shall be expended on any other object.

[²]**69B.** The Local Government may from time to time make rules
[³]
—

Power to
make rules.

- (i) prescribing the qualifications of candidates for employment under clause (xi) of section 69; and
- (ii) generally, for the guidance of the Commissioners in all matters connected with the carrying out of the purposes of sections 69 and 69A.

70. With the consent of two-thirds of the Commissioners obtained in writing, and with the sanction of the Local Government, the Commissioners may contribute a portion of the municipal fund towards the expenses incurred in any other municipality or elsewhere, for any of the purposes mentioned in [⁴][section 69, sub-section (1)], or towards the

Expenditure
outside
municipality.

[¹] Section 1 of the Indian Councils Act, 1892, has been repealed by s. 8 (3) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

[²] See foot-note [²] on p. 531, *ante*.

[³] For lists of rules made under s. 69B, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁴] The words and figures "s. 69, sub-section (1)," in s. 70, were substituted for the words, "the last preceding section" by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 8 (1), in Vol. III of this Code.

(Secs. 71-74.)

salary of any officer under another authority whose services are employed by them; and also towards the expenses of making, maintaining and repairing any work for the improvement of a river or harbour (by whomsoever such work may be done).

But no contribution shall be made under this section to any work unless the same is calculated to benefit the inhabitants of the contributing municipality.

[¹][Notwithstanding anything in this section, the municipal fund may be applied, by the vote of the majority referred to in the proviso to section 69, sub-section (1), and without the consent and sanction mentioned in this section, to meeting expenses incurred beyond the limits of the municipality in the training of female medical practitioners or of veterinary practitioners.]

Account books to be kept open and quarterly statement published.

71. The account-books of the municipality shall be open to the inspection of any tax-payer at the office of the Commissioners on a day or days to be fixed in each month.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and shall, with the account-books, be open to the inspection of any tax-payer.

A similar account shall be prepared for each year as soon as possible after its close, and shall be open to inspection as aforesaid.

Annual estimates to be prepared.

72. The Commissioners, at a meeting held at least two months before the close of the year, shall prepare in detail estimates showing the probable receipts and expenditure during the ensuing year and the objects in respect of which it is proposed to incur such expenditure.

Estimates to be published.

73. Copies of the estimates and translations thereof in the vernacular of the district shall be lodged in the office of the Commissioners.

During fourteen days after the estimates shall have been so lodged in the said office, of which due notice shall be locally published, the estimates and translations in the vernacular of the district shall be open to inspection at all reasonable times by any tax-payer of such municipality who may desire to inspect the same.

Any written suggestion which may be deposited in the office of the Commissioners shall be recorded and laid before them for consideration at the next meeting.

Estimates to be transmitted to Magistrate.

74. After the expiration of the said fourteen days, and after such revision as may appear requisite, the estimates shall be transmitted to the Magistrate of the district.

[¹] This paragraph was added by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 8 (2), in Vol. III of this Code.

(Secs. 75-78.)

75. The Magistrate may either forward the estimates to the Commissioner of the Division, or may return them to the Commissioners with such remarks and suggestions as he shall think fit to record. And the Commissioners at a meeting shall take into consideration the Magistrate's remarks, and shall either adopt his suggestions or shall record in writing their reasons for refusing to do so: and the estimates shall thereupon be returned to the Magistrate for transmission to the Commissioner of the Division.

Magistrate
may record
remarks.

76. The Commissioner of the Division may either sanction the estimate as it stands * * * *^[1] or may cause it to be returned to the Commissioners for such modifications as he may think necessary; and, when such modifications have been made, the estimate shall be re-submitted for ratification to the Commissioner of the Division, ^[2] [or if such modifications as may be recommended are not made, it shall be open to the Commissioner of the Division to make such alterations as may seem to him fit]:

Powers of
Commissioner
as to esti-
mates.

Provided that the Commissioner of the Division shall not raise the total of the proposed expenditure above the sum shown by the estimate to be at the disposal of the Commissioners.

77. The Commissioners at a meeting may, from time to time, revise any estimate of expenditure with the view of providing for any modifications which they may deem it advisable to make in the appropriation of the amount at their disposal, and such revised estimate shall be published and forwarded in the manner hereinbefore prescribed; and the Magistrate and the Commissioner of the Division may deal with such revised estimate in the manner provided above.

Estimate of
expenditure
may be
revised.

78. After the estimates of the municipality for the year shall have been sanctioned as above, the Commissioners at a meeting may, from time to time, by a general or a special resolution, authorize the expenditure of any sum provided in such estimates, or any part of such sum, for the purpose to which it has been assigned in such estimate.

Disbursement
of expendi-
ture sanc-
tioned in
estimate.

Notwithstanding anything contained in this section, the Local Government may lay down such rules^[3] as it may think fit, limiting or regulating the powers of any municipality in respect to the expenditure of money for purposes which are provided for in the budget estimates of the year.

^[1] The words "or sanction it after making such alterations therein as may seem to him fit," in s. 76, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 32, and are omitted.

^[2] These words in square brackets in s. 76 were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 32, in Vol. III of this Code.

^[3] For rules made under s. 78, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 79-82.)

Power of
Local
Government
if work esti-
mated to cost
more than
five thousand
rupees.

79. If any work is estimated to cost above five thousand rupees, the Local Government may require the plans and estimates of such work to be submitted for its approval, or for the approval of any officer of Government, before such work is commenced; and may require statements of the progress and completion of such work, with accounts of the expenditure on the same, to be submitted, from time to time, in such form as it may prescribe, for its approval, or for the approval of such officer.

Disbursement
of excess
expenditure.

80. It shall not be lawful for the Commissioners to authorize the expenditure on any object during the year of a sum in excess of that which has been sanctioned in the estimate of the year, or in a revised estimate, for such object, but, if it be found necessary in the course of the year, the Commissioners may recommend to the Commissioner of the Division that the allotments which have been made to the different heads of the estimate shall be modified by transfer of any amount from one head to another, and the Commissioner of the Division may sanction such transfers of allotment.

An annual
report of
proceedings,
etc., to be
submitted.

81. The Commissioners shall, at such time and in such form as the Local Government shall direct, furnish annually a report of their proceedings and statements of the works executed by them, and of all sums received and expended by them.

The report and any orders which may be passed thereon by Government shall be open to the inspection of the tax-payers at the office of the Commissioners with the account-books and the quarterly and the annual accounts.

Keeping of
registers and
submission
of returns.

[¹] **82.** (1) The Commissioners shall keep such registers, use such forms and submit such returns as the Local Government may from time to time prescribe.[²]

(2) The municipal accounts shall be audited each year in such manner as the Local Government may direct:[²]

Local
Government
may appoint
special officer
to examine
and report
upon
accounts.

Provided that if the officer appointed to make the yearly audit in any municipality shall report that the accounts are in such confusion that the financial position of the municipality cannot readily be ascertained, the Local Government may, by an order in writing, require the Commissioners to submit, within a time and to a person to be specified

[¹] This section was substituted for the original s. 82 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 33, in Vol. III of this Code. The original section ran as follows :—

“ 82. The municipal accounts shall be kept in such form, and shall be audited each year in such manner, as the Local Government shall direct.”

[²] For a list of rules made under s. 82, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 83-85.)

in such order, the accounts duly adjusted; and, if the Commissioners fail to comply with such order, the Local Government may appoint^[1] a special officer to examine and report upon the accounts, and shall fix the salary of such special officer, which salary shall be paid from the municipal fund, unless the Local Government shall otherwise direct.

83. Unless the Local Government shall otherwise direct, all sums received on account of the municipal fund shall be paid into a Government treasury, or into any bank or branch bank used as a Government treasury in or near to the municipality, and shall be credited to an account to be called the account of the municipality to which they belong:

Custody of
the municipal
fund.

Provided that the Commissioners may invest any moneys not required for immediate use either in Government securities, or in any other form of security which may be approved of by the Local Government.

84. Unless the Commissioner of the Division shall expressly extend (as he is hereby empowered to do, on the recommendation of the Commissioners at a meeting) the limit of the powers of the Chairman or Vice-Chairman in this behalf, all orders for the payment of money from the municipal fund, if for a sum not above five hundred rupees, shall be signed by the Chairman or Vice-Chairman; and all orders for larger sums by both of the said officers or by one of the said officers and another Commissioner.

Orders for
payment of
money from
municipal
fund.

No such orders shall be issued otherwise than for the payment of money of which the expenditure has been authorized by the Commissioners at a meeting, as provided in section 78.

PART IV.

OF MUNICIPAL TAXATION.

85. The Commissioners may, from time to time, at a meeting convened expressly for the purpose, of which due notice shall have been given, and with the sanction of the Local Government impose^[2] within

Tax upon
persons or
holdings.

[¹] For appointments made under s. 82, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] For lists of orders made under s. 85, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 86.)

the limits of the municipality one or other ^[1][or] both, of the following taxes:—

- (a) a tax upon persons occupying holdings within the municipality according to their circumstances and property within the municipality:

Provided that the amount assessed upon any person in respect of the occupation of any holding shall not be more than eighty-four rupees *per annum*; or

- (b) a rate on the annual value of * *^[2] holdings situated within the municipality:

Provided that such rate shall not exceed seven and a half *per centum* on the annual value of such holdings except within the municipalities of ^[3][Howrah], Patna [*Dacca and Darjeeling*], in which it shall not exceed ten *per centum* on such annual value: and provided also that no rate shall be imposed on any holding of which the annual value is less than six rupees:

^[4][Provided that both the taxes shall not be in force at the same time in the same ward.]

Additional
taxes.

86. The Commissioners may, from time to time at a meeting convened as aforesaid, and with the sanction of the Local Government, order^[5] that the following tax, fee, tolls and rates, or any of them, be levied within the limits of the municipality in addition to either of the taxes mentioned in the last preceding section:—

- (a) a tax on carriages, horses and other animals named in the fifth Schedule;
- (b) a fee on the registration of carts;
- (c) tolls on ferries, and (subject to the provisions of sections 158 and 159) tolls upon bridges and metalled roads;

^[1] This word "or," in s. 85, was substituted for the words "but not" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 34, in Vol. III of this Code.

^[2] The word "all," in s. 85 (b), was repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 34, and is omitted.

^[3] The words "Howrah, Patna," in s. 85 (b), were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 34, in Vol. III of this Code.

^[4] This proviso was added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 34, in Vol. III of this Code.

^[5] For lists of orders made under s. 86, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 87.)

- (d) a water-rate not exceeding [¹][seven-and-a-half] *per centum* on the annual value of holdings when the houses and lands are situated in streets supplied with water, and not exceeding [¹][six] *per centum* when the houses and lands are situated in streets not so supplied;
- (e) a lighting-rate not exceeding three *per centum* on such annual value;
- (f) a fee for the cleansing of latrines:

Provided that the taxes mentioned in clauses (d), (e) and (f) shall not be levied in any municipality unless the provisions of Part VII in respect of clause [(d), or of Part VIII in respect of clause (e),] or of Part IX in respect of clause (f), shall have been extended wholly or partly to such municipality in the manner hereinafter provided.

Of the Tax on Persons.^[2]

87. When it has been determined that a tax shall be imposed on persons occupying holdings within the municipality, according to their circumstances and property, the Commissioners, after making such inquiries as may be necessary, shall cause to be prepared an assessment list which shall contain the following particulars, and any others which the Commissioners may think proper to include:—

- (a) name of the street or road in which the holding is situated;
- (b) number of the holding on the register;
- (c) name of the person occupying the holding, whether such person be assessed or exempted from assessment;
- (d) description of the holding, and of the property within the municipality, and the profession or business of the person assessed;
- (e) amount of annual assessment;
- (f) amount of quarterly instalment;
- (g) if the occupier of the holding is exempted from assessment, a note to that effect.

The tax upon persons shall be payable in quarterly instalments by persons occupying holdings.

^[1] The words "seven-and-a-half" and "six," in s. 86 (d), were substituted for "six" and "five," respectively, by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 35, in Vol. III of this Code.

^[2] As to the imposition of this tax, *see* s. 85, *ante*, p. 537.

(Secs. 88-90.)

Such tax shall not be assessed or levied on any person in respect of the occupation * *^[1] of any building which is used exclusively as a place of public worship ^[2][or in respect of the occupation of any public burial or burning ground registered under section 254].

Duration of
assessment.

88. Save as is herein otherwise provided, every assessment of the tax upon persons shall take effect from the beginning of the year next following that in which the notice required by section 112 is published, and shall be valid for three years, and until the beginning of the year next after the date on which a new assessment or valuation may be published, or until the assessment and valuation be revised and amended:

Provided that, when this Act is extended to any place, the first assessment may take effect from the beginning of the quarter next following that in which the said notice shall be published.

Assessment of
public
buildings.

89. In any municipality in which the tax on persons is imposed, no tax shall be assessed on any person in respect of his occupation of any holding which ^[3][contains any building] the property of Government ^[4][or of a local authority], but a rate not exceeding seven-and-a-half *per centum* may be assessed on the annual value of every such holding, to be ascertained in the manner prescribed by section 101, and such rate shall be payable by Government ^[5][or the local authority concerned].

Procedure if
aggregate
amount of
rates assessed
on any person
exceeds
eighty-four
rupees *per*
annum.

90. Whenever any tax shall have been assessed on any person in respect of his occupation of two or more holdings, and the aggregate of the amount so assessed upon him shall exceed eighty-four rupees *per annum*, such person may, within fifteen days of the publication of the notice required by section 112, apply to the Commissioners to cancel such assessment, and to substitute for the total amount of tax so assessed upon him, in respect of the said holdings, a rate to be calculated, at seven-and-a-half *per centum* on the annual value of such holdings; and the Commissioners shall thereupon substitute such rate; and, for the purpose of calculating the amount of such rate, shall determine the

[¹] The words "of arable lands, or," in s. 87 were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 36, and are omitted.

[²] These words and figures in square brackets in s. 87 were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 36, in Vol. III of this Code.

[³] The words "contains any building," in s. 89, were substituted for the word "is" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 37, in Vol. III of this Code.

[⁴] The words "or of a local authority," in s. 89, were substituted for the words "and used for the purposes of a public building" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 37 (as partially repealed by Ben. Act 6 of 1894), in Vol. III of this Code.

[⁵] The words "or the local authority concerned," in s. 89, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 37 (as partially repealed by Ben. Act 6 of 1894), in Vol. III of this Code.

(Secs. 91-96.)

annual value of the said holdings in the manner prescribed by section 101.

Every rate imposed under this section shall be payable by the occupier of the holdings so rated.

91. The Commissioners may exempt from assessment any person who may by them be deemed too poor to pay the tax; but the name of the occupier of every holding shall be included in the assessment-list, whether he be assessed or exempted from assessment. Power of exemption.

92. If any person mentioned in the assessment-list shall, at any time after the publication thereof, have ceased to occupy any holding in respect of the occupation of which he has been assessed, or if the means and property in respect of which he has been so assessed shall have been reduced, the Commissioners may on his application exempt him from his assessment, or may revise the same; and such exemption or revision shall take effect from such date as the Commissioners may direct. Power to apply for reduction of assessment in altered circumstances.

93. The Commissioners may, at any time after the publication of the notice required by section 112, assess any person who was without authority omitted from the assessment-list, or whose liability to assessment has accrued thereafter, and may enhance any assessment which appears to them to be inadequate, and to have been so made owing to mistake or fraud. Power to alter assessment.

Any assessment or enhancement made under this section shall take effect from the beginning of the quarter next following that in which such assessment or enhancement is made.

94. The Commissioners may at any time substitute for any name mentioned in the assessment-list the name of any new occupier of a holding, and may assess the tax on such person, and such person shall be liable to pay such assessment from the date on which his occupation of the holding commenced. Procedure on change of occupation.

95. If any holding shall become vacant in course of the year, assessment on account of the occupation of such holding shall cease to have effect from the first quarter next following that in which it became vacant. Assessment on vacant holdings when to cease.

Of the Rate on the value of Holdings.[¹].

96. When it has been determined that a rate shall be imposed on the annual value of holdings, the Commissioners, after making such inquiries as may be necessary, shall determine the valuation of all holdings within the municipality as hereinafter provided. Commissioners to determine the valuation of holdings.

[¹] As to the imposition of this rate, see s. 85, *ante*, p. 537.

(Secs. 97-100.)

Duration of
assessment.

97. Save as is herein otherwise provided, such valuation shall be valid for [¹][five] years from the date on which it first takes effect in the municipality, and until the beginning of the year next after the date on which a new valuation may be made, or until the valuation be revised and amended.

Effect of
alteration of
percentage.

[²]**97A.** If, within the period prescribed in the last preceding section, the percentage on the valuation of holdings at which the rate is to be levied is altered by the Commissioners under the provisions of section 102, the amount of the rate and the amount of the quarterly instalments thereof payable in each case shall be altered accordingly in the rating list, but the Commissioners shall not thereby be deemed to have made a new or revised assessment-list.

Holdings
exempted
from tax.

98. The rate on the value of holdings shall not be assessed or levied on any holding which is used exclusively as a place of public worship, or which is duly registered as a public burial or burning ground under section 254.

Exemption of
charitable
holdings from
assessment.

[³][The Commissioners at a meeting may, with the sanction of the Local Government, exempt from assessment any holding used for purposes of public charity.]

What returns
may be re-
quired for
ascertaining
annual value.

99. The Commissioners, in order to prepare the valuation-list, may, whenever they think fit, by notice, require the owners or occupiers of all holdings to furnish them with returns of the rent or annual value thereof; and the Commissioners, or any person authorized by them [⁴][in writing] in that behalf, at any time between sunrise and sunset, may enter, inspect and measure any such holding after having given forty-eight hours' previous notice of their intention to the occupier thereof:

[⁵][Provided that where an assessor is appointed, such assessor shall not be competent to authorize any other person to enter, inspect and measure any such holding.]

Penalty for
default in
furnishing
return.

100. Whoever refuses or fails to furnish any such return for the space of one week from the day on which he shall have been required to do so, or knowingly makes a false or incorrect return, shall be liable to a fine not exceeding twenty rupees, and to a further daily fine not

[¹] The word "five," in s. 97, was substituted for the word "three" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 38, in Vol. III of this Code.

[²] Section 97A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 39, in Vol. III of this Code.

[³] This paragraph was added to s. 98 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 40, in Vol. III of this Code.

[⁴] The words "in writing," in s. 99, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 41, in Vol. III of this Code.

[⁵] This proviso was added to s. 99 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 41, in Vol. III of this Code.

(Secs. 101-103.)

exceeding five rupees for each day during which he shall omit to furnish a true and correct return; and whoever hinders, obstructs, or prevents any Commissioner, or any person appointed by the Commissioners as aforesaid, from entering, or inspecting, or measuring any such holding shall be liable to a fine not exceeding two hundred rupees.

101. The gross annual rent at which any holding may be reasonably expected to let shall be deemed to be the annual value thereof, and such value shall accordingly be determined by the Commissioners, and entered in the valuation-list: Annual value of holdings how to be ascertained.

Provided that, [¹except in the Darjeeling Municipality,] if there be on a holding any building or buildings the actual cost of erection of which can be ascertained or estimated, the annual value of such holding shall in no case be deemed to exceed an amount which would be equal to seven-and-a-half *per centum* on such cost, in addition to a reasonable ground-rent for the land comprised in the holding:

Provided also that, where the actual cost so ascertained shall exceed one *lakh* of rupees, the percentage on the annual value to be levied in respect of so much of the cost as is in excess of one *lakh* of rupees shall not exceed one-fourth of the percentage determined by the Commissioners under section 102.*

Provided further that in estimating the annual value of a holding under this section, the value of any machinery that may be on such holding shall not be taken into consideration.

102. Subject to the provisions of section 85, the Commissioners, at a meeting to be held before the close of the year next preceding the year to which the rate will apply, shall determine the percentage on the valuation of holdings at which the rate shall be levied, and the percentage so fixed shall remain in force until the order of the Commissioners determining such percentage shall be rescinded, and until the Commissioners at a meeting shall determine some other percentage on the valuation of holdings at which the rate will be levied from the beginning of the next year: Determination of rate of tax on holdings.

Provided that, when this Act is first extended to any place, the first rate may be levied from the beginning of the quarter next after that in which the percentage has been fixed by the Commissioners at a meeting.

103. As soon as possible after the percentage at which the rate is to be levied for the next year shall have been determined under the Preparation of valuation and rating list.

[¹] The words "except in the Darjeeling Municipality," in s. 101, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 42, in Vol. III of this Code.

(Secs. 104-105.)

last preceding section, the Commissioners shall cause to be prepared a valuation and rating list, which shall contain the following particulars, and any others which the Commissioners may think proper to include:—

- (a) name of the street or road in which the holding is situated;
- (b) number of the holding on the register;
- (c) description of the holding;
- (d) annual value of the holding;
- (e) name of owner;
- (f) amount of rate payable for the year;
- (g) amount of quarterly instalment;
- (h) if the holding is exempted from assessment, a note to that effect.

The rate upon holdings shall be payable in quarterly instalments by the owner of the holding.

Power to assess upon house consolidated tax for house and land on which it stands.

104. If any house belongs to one owner, and the land on which it stands and any adjacent land which is usually occupied therewith belongs to another, the Commissioners may value such house and land together and may impose thereon one consolidated rate.

The total amount of the rates shall be payable by the owner of the house, who shall thereafter be entitled to deduct from the rent which he pays for the land such proportion of the rate so paid by him as is equal to the proportion which such rent bears to the annual value of the holding.

If the owner of the house and the owner of the land do not agree in respect of the proportion of the rate so deducted by the owner of the house, the Commissioners shall, on the application of either party, make an award declaring the amount payable by each, and such award shall be final.

Tax due from non-resident owner may be recovered from occupier and deducted by him from his rent.

105. If the sum due from the owner of any holding remains unpaid after the notice of demand has been duly served, and such owner be not resident within the municipality, or the place of abode of such owner be unknown, the same may be recovered from the occupier for the time being of such holding, who may deduct, from the next and following payments of his rent, the amount which may be so paid by or recovered from him:

Provided that no arrear of rate which has remained due from the owner of any holding for more than one year shall be so recovered from the occupier thereof.

(Secs. 106-111.)

106. Whenever, from the circumstances of the case, the levy of the rate on any holding in the municipality would be productive of excessive hardship to the person liable to pay the same, the Commissioners at a meeting may reduce the amount payable on account of such holding, or may remit the same.

Power of Commissioners in cases of excessive hardship.

107. If the value of any holding shall be diminished from any cause beyond the control of the owner thereof, the owner thereof may apply for reduction of the valuation of the same.

Application for reduction of assessment.

108. The Commissioners may, at any time after the publication of the notice required by section 112, value and rate any holding which was without authority omitted from the valuation and rating list, or which has become liable to valuation and rating after the publication thereof; and may enhance the valuation and rating of any holding which may appear to have been insufficiently valued or rated through mistake, oversight or fraud; and may re-value and re-assess any holding the value of which has been increased by additions or alterations to any building thereon.

Power to revise valuation and assessment.

Any rate imposed or enhancement made under this section shall take effect from the beginning of the quarter next following that in which the rate shall be imposed or enhancement made.

109. The Commissioners may, at any time, substitute for any name mentioned in the valuation and rating-list the name of any person to whom any holding mentioned therein shall have been transferred.

Power to revise assessment-list.

Such person shall be liable to pay the rate payable on such holding from the first day of the quarter next after the date of the transfer.

110. When any holding has been vacant for sixty or more consecutive days during any year, the Commissioners shall remit, and, if the rate has been paid, shall refund, one-half of so much of the rate of that year as may be proportionate to the number of days the said holding has remained unoccupied:

Remission or refund on account of vacant holdings.

Provided that the owner of such holding, or his agent, has given to the Commissioners notice in writing of the vacancy thereof, and that the application for refund is made within six months from the date on which such notice is delivered at the office of the Commissioners.

The amount of tax to be remitted or refunded shall be calculated from the date of the delivery of such notice.

111. Whoever, being the owner of any holding for which a remission or refund of the rate has been made under the last preceding section, fails to give notice of the re-occupation of such holding within ten days of such re-occupation shall be liable to a fine not exceeding three times the amount of rate payable quarterly on such holding.

Penalty.

(Secs. 111A-113.)

Of General Provisions relating to the Tax on Persons and the Rate on Holdings and to the Recovery of the same.^[1]

Appointment
of assessor of
municipal
taxes.

[²]111A. If at any time it appears to the Local Government, on the report of the Commissioner of the Division, that the assessment in any municipality is insufficient or inequitable, and if the Commissioners have not appointed an assessor under section 46, the Local Government may, by an order in writing, require the Commissioners of such municipality to revise and amend such assessment, or to show cause against such order within a time to be specified therein;

and if the Commissioners fail to comply with such order, or if, in the opinion of the Local Government, the revised and amended assessment is insufficient or inequitable, the Local Government may, by an order in writing, require the Commissioners to appoint an assessor of municipal taxes for such municipality, within a time and for a period to be specified in such order; and such assessor shall exercise all the powers of assessment except under sections 113, 114 and 115, vested by this Act in the Commissioners.

Such order shall fix the pay of the assessor and the cost of his establishment, and such pay and cost shall be paid monthly by the Commissioners.

Publication
of notice of
assessments.

112. When the assessment-list of the tax upon persons, or the valuation and rating-list of the rate on the annual value of holdings, shall have been prepared or revised, the Chairman shall sign the same, and shall cause it to be deposited in the office of the Commissioners, and shall cause the notice in Form A or the notice in Form B of the third Schedule (as the case may be) to be published in the manner prescribed by section 354.

Application
for review.

113. Any person who is dissatisfied with the amount assessed upon him or with the valuation or rating of any holding,

or who disputes his occupation of any holding, or his liability to be assessed or rated,

may apply to the Commissioners to review the amount of assessment, valuation or rating, or to exempt him from the assessment or rate.

[¹][When an assessor has been appointed under section 111A, notice of every such application shall be given by the Commissioners to the assessor.]

[¹] As to the imposition of this tax and rate, see s. 86, *ante*, p. 538.

[²] Section 111A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 4, in Vol. III of this Code.

[³] This paragraph was added to s. 113 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 44, in Vol. III of this Code.

(Secs. 114-118.)

114. Every application presented under the last preceding section shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the ^{Procedure upon review.} [1][Commissioners at a meeting]. The Commissioners so appointed, after [2][taking such evidence and] making such inquiries as they may deem necessary, may pass such order as they shall think fit in respect of such application.

The decision of such Commissioners, or of a majority thereof, in such cases shall be final.

115. Unless good cause shall be shown to the satisfaction of such Commissioners for extending the time allowed, and save as is otherwise expressly provided in this Act, no such application shall be received after the expiration of one month from the date of publication of the notice required by section 112 relating to the list containing the assessment, valuation or rating in respect of which the application is made, or after the expiration of fifteen days from the date of service of the first notice of demand for payment at the rate in respect of which the application is made, whichever period shall last expire. ^{Limitation of time for application for review.}

116. No objection shall be taken to any assessment or rating * * * [3] in any other manner * * * [4] than in this Act is provided. ^{* * * Assessment to be questioned only under Act.}

117. By notification to be posted up in their office, the Commissioners shall declare at what hours of each day (not being a Sunday or other recognized holiday) the office shall be open for the receipt of money and the transaction of business. ^{Office hours for payment of taxes.}

118. The amount due by any person on account of the tax on persons, or the rate on holdings, shall be deemed to be the amount entered in the lists, the notice relating to which is published under section 112, unless the amount entered in such lists is subsequently altered by the Commissioners as provided in this Act; in which case the amount to which the assessment or rating is so altered shall be deemed to be the amount due. ^{Tax payable in advance.}

Every instalment of such tax or rate shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

[1] The words "Commissioners at a meeting," in s. 114, were substituted for the word "Chairman" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 45, in Vol. III of this Code.

[2] The words "taking such evidence and," in s. 114, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 45, in Vol. III of this Code.

[3] The words "nor shall the liability of any person to be assessed or rated be questioned," in s. 116, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 46, and are omitted.

[4] The words "or by any other authority" were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 46, and are omitted.

(Secs. 119-121.)

Receipts to
be given.

119. For all sums paid on account of any tax or rate under this Act a receipt stating the amount and the tax or rate on account of which it is paid shall be given, signed by the tax-collector, or by some other officer authorized by the Commissioners to grant such receipts.

Bill and
notice of
demand to be
presented.

120. At any time within six months after any sum has become due on account of any tax or rate, the Commissioners shall cause to be presented to the person liable to the payment thereof a bill for the said sum, which shall contain a statement of the period and of the tax or rate on account of which the charge is made.

If the amount mentioned in such bill be not paid on presentation thereof, a notice of demand in the form marked A in the fourth Schedule, with copy of the bill appended thereto, shall be served on the person liable to pay the same, and such notice of demand may be served at any subsequent time:

Provided that no charge shall be made in respect of the service of such notice.

Such notice shall be signed by the Chairman or an officer authorized in that behalf, and shall be served by a person authorized to receive payment.

If not paid in
fifteen days,
process of
distress may
issue.

121. If any person, after service upon him of such bill and notice, shall not, within fifteen days of the service of such notice or from the date of any order made on an application for review under section 114, pay the sum due, either to the Commissioners at their office or to some person authorized by them to receive the money, or show to the Commissioners sufficient cause for not paying the same,

the amount of the arrear due, with costs on the scale shown in the table of fees marked B in the fourth Schedule, may at any time within three months after the date of service of the said notice, or of the order made on an application for review as aforesaid, be levied by distress and sale of any movable property belonging to the defaulter, except ploughs, plough-cattle, tools or implements of agriculture or trade, wherever found, or of any movable property belonging to any other person, subject to the same exceptions which may be found within the holding in respect of which such defaulter is liable to such tax or rate:

[¹][Provided that when the holding in respect of which the default is committed is a place of business, and the movable property distrained

[¹] These two provisos were substituted for the original paragraph by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 47, in Vol. III of this Code. The original paragraph ran as follows:—

“If the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress, or any sale under the same.”

(Secs. 122-124.)

is shown to the satisfaction of the Commissioners to have been left there for repairs or safe custody in the ordinary course of business, it shall be released :

Provided also that, if the said property or any part thereof belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner thereof for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.]

122. Every warrant of distress and sale under the last preceding section shall be issued by the Commissioners, and shall be in the form marked C in the fourth Schedule. Distress how to be made.

Distress shall be made by actual seizure of movable property, and the officer charged with the execution of the warrant shall be responsible for the due custody thereof.

Such officer shall make an inventory of all movable property seized under the warrant, and shall give not less than ten days' previous notice of the sale, and of the time and place thereof by beat of drum, in the municipality or ward in which the property is situated, and by serving on the defaulter a notice in the form marked D in the fourth Schedule :

Provided that, if the property is of a perishable nature, it may be sold at once with the consent of the defaulter, or without such consent at any time after the expiry of six hours from the seizure.

123. The officer charged with the execution of the warrant may, under the special order of the Commissioners, between sunrise and sunset break open any outer or inner door or window of a house, in order to make the distress, if he has reasonable ground for believing that such house contains any movable property belonging to the defaulter, and if, after notification of his authority and purpose and demand of admittance duly made, he cannot otherwise obtain admittance : Officer may break open door.

Provided that he shall not enter or break open the door of any room appropriated for the *zanana*, or residence of women, which by the usage of the country is considered private, except after three hours' notice and opportunity given for the retirement of the women.

124. If the sum due be not paid with costs before the time fixed for the sale, or the warrant be not discharged or suspended by the Commissioners, the movable property seized shall be sold by auction, at the time and place specified, in the most public manner possible, and the proceeds shall be applied in discharge of the arrears and costs. Sale how to be conducted.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his

(Secs. 125-127.)

right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.

Return of
sales.

The tax-collector or other officer authorized in that behalf shall make a return of all such sales to the Commissioners in the form marked E in the fourth Schedule.

Certain
persons
prohibited
from
purchasing at
sales.

125. All officers and servants of the Commissioners, and all *chaukidars*, constables and other officers of police are prohibited from purchasing any property at any such sale.

Penalty.

[¹]Whoever (not being a public servant within the meaning of 41 of 1886, section 21 [²]of the Indian Penal Code) contravenes the provisions of this section shall be punished with simple imprisonment for a term which may extend to two months, or with fine, or with both.

Commis-
sioners to
keep
account of
distresses and
sales.

126. The Commissioners shall cause a regular account to be kept of all distresses levied, and sales made, for the recovery of taxes under this Act.

Sale of pro-
perty beyond
limits of
municipality.

127. If no sufficient [³][movable property] belonging to a defaulter, or being upon the premises in respect of which he is assessed or rated, can be found within the municipality, the Magistrate may, on the application of the Commissioners, issue his warrant to any officer of his Court for the distress and sale of any [⁴][movable] property or effects belonging to the defaulter within any other part of the jurisdiction of the Magistrate, or for the distress and sale of any [⁴][movable] property belonging to the defaulter within the jurisdiction of any other Magistrate [⁵] [exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal] [⁶] and such other Magistrate shall endorse the warrant so issued, and cause it to be executed, and the amount, if levied, to be remitted to the Magistrate issuing the warrant, who shall remit the same to the Commissioners.

[¹] This paragraph was added to s. 125 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 48, in Vol. III of this Code.

[²] Printed in the General Acts, 1834-67, Ed. 1909, p. 252.

[³] These words "movable property," in s. 127, were substituted for the words "goods or chattels" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 49, in Vol. III of this Code.

[⁴] This word "movable" in s. 127, was substituted for the word "personal" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 49, in Vol. III of this Code.

[⁵] The words "exercising jurisdiction within the territories administered by the Lieutenant-Governor of Bengal," in s. 127, were substituted for the word "whatsoever" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 49, in Vol. III of this Code.

[⁶] This includes the Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 128-131.)

128. No distress or sale made under this Act shall be deemed unlawful nor shall any party making the same be deemed a trespasser on account of any error, defect or want of form in the bill, notice, summons, warrant of distress, inventory or other proceeding relating thereto.

Distress or sale no unlawful for want of form.

129. Instead of proceeding by distress and sale, or in case of failure to realize thereby the whole or any part of any tax, the Commissioners may sue the person liable to pay the same in any Court of competent jurisdiction.

Commissioners may bring suits instead of distraining or on failure of distress.

130. The Commissioners may order to be struck off the books the amount of any tax or rate which may appear to them to be irrecoverable.

Irrecoverable taxes.

Of the Tax on Carriages, Horses and other Animals.^[1]

131. When it has been determined that a tax on carriages, horses and other animals specified in the fifth Schedule shall be imposed, the Commissioners at a meeting shall make an order that every carriage, horse, and every other animals of the kind specified in the said Schedule, which is kept ^[2] [or is used in the ordinary course of business] within, or which is let for hire within or without, the municipality, ^[2] [and is used in the ordinary course of business] within it, shall pay the tax, and shall cause such order to be published in the manner prescribed by section 354.

Tax on carriages, horses and other animals.

Such order shall be published at least one month before the beginning of the half-year in which such tax shall first take effect; and shall specify at what rates, not exceeding the rates given in the said Schedule, such tax shall be levied.

But such tax shall not be imposed on—

- (a) horses or ponies belonging to officers doing regimental duty, at the rate of one animal for each officer;
- (b) animals exempt from any municipal tax under section 25 ^[3] of the Indian Volunteers Act, 1869;
- (c) carriages or animals belonging to Government, or to the Commissioners, or for keeping which for the execution of their duty an allowance is made by the Government or by the Commissioners to any of their officers;

30 of 1869.

^[1] As to the imposition of this tax, see s. 86, *ante*, p. 537.

^[2] The words "or is used in the ordinary course of business" and "and is used in the ordinary course of business," in s. 131, were substituted for "the words "or habitually used" and "and habitually used," respectively, by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (1), in Vol. III of this Code.

^[3] Printed in the General Acts, 1868-78, Ed. 1909, p. 96.

(Secs. 132-135.)

- (d) animals used by, or exclusively for the purposes of, any regiment;
- (e) horses or ponies used by police officers, at the rate of not more than one for each officer;
- (f) carriages, the wheels of which do not exceed twenty-four inches in diameter;
- (g) carriages or animals kept for sale by any *bond fide* dealer in such carriages or animals, and not used for any other purpose.

Tax so fixed to continue in force until altered.

132. Any order of the Commissioners imposing a tax under the last preceding section shall continue in force until rescinded, and the tax shall be levied at the rates specified in the order published as aforesaid unless and until the Commissioners at a meeting, held not less than fifteen days before the end of the year, make and publish an order specifying any different rates at which the tax shall be payable for the ensuing year.

Licenses how to be obtained.

133. In any municipality in which a tax has been imposed under section 131, the owner of every carriage, horse and other animal specified in the said Schedule shall, within the first month of each half-year, forward to the Commissioners a statement in writing, signed by him, containing a description of the carriages, horses and other animals liable to the tax, for which he is bound to take out a license.

Such owner shall, at the same time, pay to the Commissioners such sum as shall be payable by him for the current half-year for the carriages, horses and other animals specified in such statement, according to the rates specified in any order for the time being in force under the two last preceding sections.

Proportionate tax on carriages, etc., acquired during half-year.

134. If any person acquires possession, at any time after the commencement of any half-year, of any carriage, horse or other animal specified in the Schedule, in respect of which no license has been given for such half-year, he shall forward a statement as above required within one month of the date on which he may have acquired possession thereof and shall pay such amount of the tax as shall bear the same proportion to the whole tax for the half-year as the unexpired portion of the half-year bears to the half year; and such amount shall be calculated from the date on which such person may have acquired possession as aforesaid.

On payment of tax, Commissioners to give a license

135. On receiving the amount of the tax due as aforesaid, the Commissioners, or some person authorized by them in that behalf, shall give to the person paying the same a license for the several carriages, horses and other animals for the period in respect of which the amount is received.

(Secs. 136-141.)

Such license shall be for the current half-year and no longer.

136. Whenever the owner of any carriage, horse or other animal liable to pay the said tax is not resident within the limits of the municipality to the Commissioners of which the tax is due, the person in whose immediate possession the carriage, horse or other animal is for the time being kept shall take out a license for the same.

Carriage, etc., liable to tax, although the owner be absent.

137. Whoever keeps, or is in possession of, any carriage, horse or other animal, without the license required by any of the three last preceding sections, shall be liable to a fine not exceeding three times the amount payable by him in respect of such license, exclusive of the amount so payable.

Penalty.

138. The Commissioners, at their discretion, may compound for any period not exceeding one year, with livery stable-keepers and other persons keeping carriages or animals for hire, for a certain sum to be paid for the carriages or animals so kept by such person, in lieu of the tax at the rates specified in any order made by the Commissioners under sections 131 and 132.

Commissioners may compound with livery stable-keepers.

139. The Commissioners shall, from time to time, cause to be prepared and entered in a book, to be kept by them, and to be open to the inspection of any person interested therein, a list of the persons to whom during the then current half-year a license has been given, and of the carriages, horses and other animals in respect of which they have paid the tax.

List of persons licensed to be prepared.

140. The Commissioners, or any person authorized by them in that behalf, may, at any time between sunrise and sunset, enter and inspect any stable or coach-house, or any place wherein they may have reason to believe that there is any carriage, horse or other animal liable to the tax, for which a license has not been duly taken out.

Power to inspect stable, etc., and to summon persons liable to the payment of the tax.

And the Commissioners may summon any person whom they have reason to believe to be liable to the payment of any such tax, or any servant of such person, and may examine such person or servant as to the number and description of the carriages, horses and other animals in respect of which such person is liable to be taxed.

141. On proof being given to the satisfaction of the Commissioners that a carriage, horse or other animal for which a license has been taken out for any half-year has ceased to be kept or to be used within the municipality during the course of such half-year, the Commissioners shall order a refund of so much of the tax for the half-year as shall bear the same proportion to the whole tax for the half-year as the period during which such carriage, horse or other animal has not been kept or used in the municipality bears to the half-year; but no such refund

Refund of tax in certain cases.

(Secs. 141A-142.)

shall be allowed unless notice be given to the Commissioners within one month of the time when such use of such carriage, horse or other animal ceased, and, except for special cause shown, the Commissioners shall pass no order for refund until after the close of the half-year in respect of which the refund is claimed.

Prohibition
of double fee.

[¹]141A. Nothing in sections 131 to 141 shall be deemed to authorize the levy of more than one fee for the same period in respect of any carriage, horse or other animal which is kept or used in more than one municipality * * [²].

Meaning of
"used in the
ordinary
course of
business."

[³]141B. A carriage, horse or other animal shall be deemed to be used in the ordinary course of business, within the meaning of section 131, if it is used on business on an average thrice a week.

Of the Registration of Carts.

Registration
and
numbering
of carts.

142. The Commissioners at a meeting may make and publish an order that every cart which is kept [⁴][or is used in the ordinary course of business] within or which is let for hire within or without the municipality [⁴][and is used in the ordinary course of business] within it shall be registered by the Commissioners with the name and residence of the owner, and shall bear the number of registration in such manner as the said Commissioners shall direct:

Provided always that such order shall be published at least one month before the beginning of the half-year in which such order for registration shall be enforced.

This section shall not apply to—

- (a) carts which are the property of the Government or of the Commissioners;
- (b) carts which are kept without the limits of the municipality, and are only temporarily and casually used within such limits;
- (c) Howrah * * * [⁵].

[¹] Section 141A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 50, in Vol. III of this Code.

[²] The words "or cantonment," in s. 141A, were repealed by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (4), and are omitted.

[³] Section 141B was inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 10, in Vol. III of this Code.

[⁴] The words "or is used in the ordinary course of business" and "and is used in the ordinary course of business," in s. 142, were substituted for the words "or habitually used" and "and habitually used," respectively, by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (1), in Vol. III of this Code.

[⁵] The words "or the Suburbs of Calcutta," in s. 142 (c), were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 51, and are omitted.

(Secs. 143-147.)

143. The registration of carts under the last preceding section shall be made, and the numbers assigned yearly or half-yearly, upon such days as the Commissioners shall notify; and such fee^[1] as they shall from time to time fix and notify, not exceeding four rupees if the registration has effect for a year, and not exceeding two rupees if the registration has effect for half a year, shall be paid for each registration. Fee for registration.

144. Any person becoming possessed of any cart which has not been registered for the then current period of registration shall register the same within one month from the date on which he may have become possessed thereof, and the Commissioners shall grant registration in any such case on payment of such amount of the fee as shall bear the same proportion to the whole fee for the current period of registration as the unexpired portion of the current period of registration bears to the whole of such period; and such fee shall be calculated from the date on which such person may have become possessed as aforesaid. Proportionate payment of fee.

145. When the ownership of any registered cart is transferred within any period of registration, it shall be registered anew within one month of the transfer in the name of the person to whom it has been transferred, and a fee not exceeding four annas shall be paid for every such last-mentioned registration. Transfer of ownership.

146. Whoever keeps, or is in possession of, a cart not duly registered as required by any of the three last preceding sections shall be liable to a fine not exceeding three times the amount payable by him in respect of such registration, exclusive of the amount so payable; and whoever, being the owner or driver of any cart, shall fail to affix thereto the registration number as required by section 142 shall be liable to a fine not exceeding five rupees. Penalty.

147. If any person owns or keeps any cart hereinbefore required to be registered without having caused the same to be registered, the Commissioners, or any person authorized by them in that behalf, may seize and detain such cart (provided the same be not employed at the time of seizure in the conveyance of any passengers or goods), together with the animals drawing the same, and all police officers are required, on the application of the Commissioners, or of any servant of the Commissioners duly authorized in that behalf, to assist in the said seizure. Seizure and sale of unregistered cart.

After such seizure the Commissioners shall forthwith issue a notice in writing that after the expiration of ten days they will sell such vehicle and animals by auction at such place as they may state in the notice; and, if any registration fee, together with the cost arising from such seizure and custody, remains unpaid for ten days after the issue

[1] As to the levy of this fee, see also s. 86, *ante*, p. 537.

(Secs. 147A.-147B.)

of such notice, the Commissioners may sell the property seized for payment of the said fee, and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction:

Provided that, if at any time before the sale is concluded, the person whose cart has been seized shall tender to the Commissioners, or to the person authorized by them to sell the cart, the amount of all the expenses incurred and the registration fee payable by him, the Commissioners shall forthwith release the cart so seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of a cart seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any cart which has been seized under this section may be sold for the realization of any such fine.

Prohibition of double fee.

[¹]**147A.** Nothing in sections 142 to 147 shall be deemed to authorize the levy of more than one fee for the same period in respect of any cart which is [²][used in the ordinary course of business] in more than one municipality * * * [³].

Apportionment of fees.

[⁴][When carts not kept within any municipality are so used in more than one municipality, the Local Government, on the application of the Commissioners of any such municipality, may, if it thinks fit, apportion between all such municipalities the registration fees paid under this Act in respect of such carts.

Levy of fee when cart registered in more than one municipality.

Where a cart is registered under this Act in more than one municipality, the Commissioners of the municipality within which the cart is kept shall have a right to levy the registration fee in preference to the Commissioners of any other municipality.]

Meaning of "used in the ordinary course of business."

[⁵]**147B.** A cart shall be deemed to be used in the ordinary course of business, within the meaning of sections 142 and 147A, if it is used on an average twice a week.

[¹] Section 147A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 52, in Vol. III of this Code.

[²] The words "used in the ordinary course of business," in s. 147A, were substituted for the words "habitually used" by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (2), in Vol. III of this Code.

[³] The words "or cantonment," in s. 147A, were repealed by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (4), and are omitted.

[⁴] These paragraphs in square brackets were added to s. 147A by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 9 (3), in Vol. III of this Code.

[⁵] Section 147B was inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 11, in Vol. III of this Code.

(Secs. 148-153.)

Of Tolls on Ferries.

148. The Local Government may, with the consent of the Commissioners, make over^[1] to the Commissioners any existing public ferry within or adjacent to the limits of the municipality, to be administered by them until the Local Government shall otherwise direct.

Existing
public ferries.

Every ferry, while so administered, shall be deemed to be a municipal ferry, and the profits derivable therefrom, or such part of the profits as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

149. The Commissioners may also, with the sanction^[2] of the Local Government, declare that any other ferry within, or adjacent to, the limits of the municipality is a municipal ferry, and the profits derivable therefrom shall thenceforward be carried to the credit of the Municipal Fund:

Other ferries
may be
declared to be
municipal.

Provided that due compensation shall be made by the Commissioners to any person for the loss which he may have sustained in consequence of such ferry being declared to be a municipal ferry.

The amount of compensation due in such cases shall be ascertained and awarded by the magistrate under the provisions of section 4 of Bengal Act 1 of 1866^[3] (*to amend certain provisions of Regulations 6 of 1819*), or any similar law for the time being in force.

150. Every municipal ferry shall be maintained by the Commissioners, and they shall do all things necessary to provide for the safety and convenience of travellers, and the safety of property to be conveyed on such ferry.

Duties of
Commis-
sioners in re-
gard to such
ferries.

151. When it has been determined to impose tolls^[4] on municipal ferries, the Commissioners at a meeting shall make and publish an order specifying the ferries and, with the sanction of the Commissioner of the Division, the rates at which such tolls shall be levied.

Rate of tolls
to be estab-
lished and
published.

Such rates may from time to time be varied with the like sanction.

152. No person shall be liable to pay any toll for crossing any river or stream at or near a municipal ferry, unless he avails himself of the means provided by the Commissioners for crossing such river or stream.

When persons
crossing river
not liable to
toll.

153. Every lease of a ferry given by the Commissioners as herein-after provided shall be liable to be cancelled at once, if it shall appear

Cancellation
of ferry
lease, etc.

[¹] For a list of orders made under s. 148, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] For a list of sanctions given under s. 149, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] Ben. Act 1 of 1866 was repealed and re-enacted by the Bengal Ferries Act, 1885 (Ben. Act 1 of 1885)—see now s. 17 of the latter Act, *post*, p. 635.

[⁴] As to the imposition of tolls, see s. 86, *ante*, p. 537.

(Secs. 154-156.)

to the Commissioners at a meeting that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from the Commissioners.

On the cancelment of a lease the Commissioners may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until they can make arrangements for such other boats and appliances as may be necessary, in which case the Commissioners shall pay a fair sum to the owners for the use of the said boats and appliances:

Provided that within a week of taking such possession, the Commissioners shall be bound to give notice to the said lessee of their intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

Toll must be prepaid.

154. Any collector or lessee of tolls, or his agent, may refuse to convey any person or goods across a municipal ferry until the proper toll has been paid, and may require any person who refuse to pay the toll to leave the boat and to remove his goods from it.

Penalty.

Any person who refuses to leave a municipal ferry boat or to remove his goods therefrom when required to do so under this section shall be liable to a fine not exceeding ten rupees.

Keeping of unauthorized ferry.

155. No person shall keep a ferry-boat for the purpose of plying for hire within a distance of two miles above or below any municipal ferry without the previous sanction,

of the Commissioners, if he plies within the limits of the municipality, of the Magistrate of the district, if without such limits,

or of the Magistrate of the district and the Commissioners, if one of the two banks between which he plies is within, and the other bank is without, such limits.

This section shall not apply to any private ferry which may be in existence at the commencement of this Act.

Penalty.

156. Whoever keeps a ferry-boat contrary to the provisions of the last preceding section shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence.

(Secs. 157-160.)

Of Tolls on Bridges and Roads.

157. The Local Government may, with the consent of the Commissioners at a meeting, make over to the Commissioners any existing toll-bar within the limits of the municipality, to be administered by them until the Local Government shall otherwise direct; every toll-bar while so administered shall be deemed to be a municipal toll-bar, and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners shall be carried to the credit of the municipal fund.

158. The Commissioners at a meeting, with the sanction of the Local Government, may establish a toll-bar and levy tolls^[1] on any bridge or metalled road which they may have constructed after the commencement of this Act, or at any place within the municipality adjacent to such bridge or metalled road at which tolls may conveniently be levied on vehicles and animals passing over such bridge or road; and the profits derivable therefrom shall be carried to the credit of the Municipal Fund:

Provided that no such toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering the expenses incurred in constructing such bridge or road and in maintaining such bridge or road in repair for the five years next after the construction thereof, together with interest on such expenses as hereinafter provided.

159. Whenever a toll-bar shall have been established, and tolls shall be levied, as provided in the last preceding section, the Commissioners shall at the end of each year publish, by causing it to be posted up at their office, an abstract account showing—

- (1) the amount of expenses incurred in the construction of such bridge or road, and in the maintenance of the same;
- (2) the amount of interest which has accrued due thereon, at the annual rate of six *per centum*, and
- (3) the amount which has been received from the profits of the said toll-bars since its establishment.

And, as soon as such expenses and interest shall have been recovered as aforesaid, such toll-bars shall be removed, and tolls shall no longer be levied on such bridge or road.

160. When it has been determined that tolls shall be levied on any such bridge or road, the Commissioners at a meeting shall make and publish an order, with the sanction of the Commissioner of the Division, specifying rates at which such tolls shall be levied.

[¹] As to the imposition of tolls, see s. 86, *ante*, p. 537.

(Secs. 161-165.)

Such rates may from time to time be varied with the like sanction.

Power of collector or lessee in case of refusal to pay toll. Penalty for refusing to pay or avoiding payment of toll.

In case of non-payment of toll, vehicle, etc., may be seized and sold.

161. Any collector or lessee of tolls may refuse to allow any person to pass through any municipal toll-bar until the proper toll has been paid.

162. Whoever, having driven any vehicle or animal (not exempted from toll) through a toll-gate, refuses to pay the toll, or, with intent to evade payment of the toll, fraudulently avoids passing through such toll-gate, shall be liable to a fine not exceeding fifty rupees.

163. If the toll due on any vehicle or animal is not paid on demand, the person authorized to collect the same may seize such vehicle or animal, or any part of its burden of sufficient value to defray the toll, and shall give immediate notice of such seizure to the Commissioners.

After such seizure the Commissioners shall forthwith issue a notice in writing that, after the expiration of ten days, they will sell the property seized by auction at such place as they may state in the notice; and if any toll, together with the cost arising from such seizure and custody, remain undischarged for ten days after the issue of such notice, the Commissioners may sell the property seized, for discharge of the toll, and of all expenses occasioned by such non-payment, seizure, custody and sale.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction:

Provided that, if at any time before the sale has been concluded, the person whose property has been seized shall tender to the Commissioners, or to the officer appointed by them to sell the property, the amount of all the expenses incurred and of the toll payable, the Commissioners shall forthwith release the property seized.

Notwithstanding anything contained in this section, the surplus of the sale-proceeds of any property seized under this section may be devoted to the payment of any fine imposed under the last preceding section; and any property which has been seized under this section may be sold for the realization of any such fine.

Of General Provisions relating to Tolls on Ferries and Roads.

Lease of ferry or toll-bar. Table of tolls to be hung up

164. The Commissioners may grant a lease of any municipal ferry or toll-bar for any period not exceeding three years.

165. A table of tolls legibly written in the vernacular of the district shall be hung up,

(Secs. 166-168.)

in some conspicuous position at each end of every municipal ferry, and

in some conspicuous position near every municipal toll-bar, so as to be easily read by all persons required to pay the toll.

166. Whoever, being a toll-collector or lessee of a municipal ferry or toll-bar, neglects to hang up a table of tolls as required by the last preceding section shall be liable to a fine not exceeding fifty rupees, and to a further fine, not exceeding ten rupees, for each day during which the offence is continued after he has been required by a notice in writing to desist from such offence. Penalty.

167. The Commissioners, or the lessee of any municipal ferry or toll-bar, may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the ordinary toll payable. Composition in respect of tolls.

168. No tolls shall be paid for the passage * * *^[1] of * * * Exemptions. *^[2] Government stores^[3] or the persons in charge of them;

or of * *^[2] police officers, or of any public or municipal officer on duty, or of any person in their custody, or of any property belonging to them or in their custody, or of any vehicle or animal employed by such persons for the transport of such property;

or of conservancy carts or other vehicles or animals belonging to the Commissioners or of the persons in charge of them;

* * * * *

*^[4]:

Provided that tolls shall be leviable for conveying such animals^[5] over a ferry.

And the Commissioners or their lessees shall not be bound to allow any person or thing not specified above to cross a ferry or to pass a toll-gate without payment of the prescribed toll.

But the Commissioners at a meeting may exempt^[6] any other class of persons or things from payment of the said toll; and in granting a

[¹] The words "of troops on the march or of animals or vehicles employed in the transport of such troops," in s. 168, were repealed by the Indian Tolls (Army) Act, 1901 (2 of 1901), and are omitted.

[²] The words "military or" were repealed by the Indian Tolls (Army) Act, 1901 (2 of 1901), and are omitted.

[³] So much of s. 168 as relates to any Government stores which are exempted by s. 3 of the Indian Tolls (Army) Act, 1901 (2 of 1901), is repealed by s. 8 of that Act.

[⁴] The words "or of any animals, whether belonging to Government or otherwise, which are attached to a regiment or a Military Department, and which pass through a toll-bar," were repealed by the Indian Tolls (Army) Act, 1901 (2 of 1901), and are omitted.

[⁵] So much of this proviso as relates to any animals which are exempted by s. 3 of the Indian Tolls (Army) Act, 1901 (2 of 1901), is repealed by s. 8 of that Act.

[⁶] For further exemptions from tolls, see ss. 3 and 4 of the Indian Tolls (Army) Act, 1901 (2 of 1901), in General Acts, 1898-03, Ed. 1909, pp. 509-511.

(Secs. 169-174.)

lease of any ferry or toll-bar may stipulate that any municipal servants and property and any other persons or things shall be allowed to pass without payment of the toll.

Police officers
to assist.

169. In all cases of resistance to the person authorized to collect tolls, police officers shall assist when required, and for that purpose shall have the same powers as they have in the exercise of their ordinary police duties.

Penalty for
taking
unauthorized
tolls.

170. Whoever, being authorized under this Act to collect tolls, demands or takes any higher tolls than the tolls authorized under this Act, shall be liable to a fine not exceeding fifty rupees, and in default of payment to one month's imprisonment.

Commission-
ers may be
appointed to
collect tolls
in a navigable
channel.

171. If the Local Government has declared that the provisions of the Canals Act, 1864,[⁴] or any other similar law for the time being in force, are applicable to any navigable channel which passes through the limits of a municipality, it may, with the consent of the Commissioners, appoint the Commissioners to collect tolls, as provided in section 8 of the said Act, until the Local Government shall otherwise direct; and the profits derivable therefrom, or such part thereof as shall be agreed upon between the Local Government and the Commissioners, shall be carried to the credit of the municipal fund.

Ben. Act 5 of
1864.

In such case the Commissioners shall exercise all the powers vested by such Act in the Collector.

Local
Government
may order
Commission-
ers to cease
levying tolls.

172. The Local Government may at any time order that the Commissioners, or any person authorized by them, shall cease to levy any tolls under the last preceding section, and may at any time withdraw such order.

PART V.

MUNICIPAL REGULATIONS WHICH SHALL BE GENERALLY IN FORCE IN ALL MUNICIPALITIES.

General.

Operation of
this Part.

173. The provisions of this Part shall be in force in every municipality, unless and until the Local Government shall otherwise direct.

Local Gov-
ernment
may order
provisions
of this Part
to be not

174. The Local Government may, at any time, make an order directing that all or any of the said provisions shall not be in force in any municipality or in any part thereof; and the provisions mentioned

(Secs. 175-177.)

in such order shall cease to be in force in such municipality, or part thereof, from the date specified in such order. in force in any municipality.

The Local Government may at any time cancel or modify any order made under this section.

175. Whenever it is provided in this Part or in Part VI that the Commissioners or the Commissioners at a meeting may require the owners or the occupiers, or the owners and occupiers of any land, to execute any work or to do anything within a specified time, such requisition shall be made, as far as possible, by a notice to be served as provided in sections 356 and 357, on every owner or occupier who is required to execute such work or to do such thing; but, if there be any doubt as to the persons who are owners or occupiers, such requisition may be made by a notification to be posted up on or near the spot at which the work is required to be executed or the thing done, requiring the owners or the occupiers, or the owners and occupiers of any land, to execute such work or to do such thing within a specified time; and in such notification it shall not be necessary to name the owners or occupiers. Procedure, when owners or occupiers required to execute works by Commissioners.

Every requisition as aforesaid shall give notice to the persons to whom it is addressed that, if they fail to comply with the requisition or to prefer an objection against such requisition as provided in the next succeeding section, the Commissioners will enter upon the land and cause the required work to be executed, or the required thing to be done; and that in such case the expenses incurred thereby will be recovered from the persons who are required in such requisition to execute such work or do such thing.

176. Any person who is required by a requisition as aforesaid to execute any work or to do anything may, instead of executing the work or doing the thing required, prefer an objection in writing to the Commissioners against such requisition within five days of the service of the notice or posting up of the notification containing the requisition; or, if the time within which he is required to comply with the requisition be less than five days, then within such less time. Person required to execute any work may prefer objection to the Commissioners.

Except as provided in the next succeeding section such objection shall be heard and disposed of by the Chairman or Vice-Chairman.

177. If the objection shall allege that the cost of executing the work or of doing the thing required will exceed three hundred rupees, such objection shall be heard and disposed of by the Commissioners at a meeting; unless the Chairman or Vice-Chairman shall certify that such cost will not exceed three hundred rupees, in which case the objection shall be heard and disposed of by the Chairman or Vice-Chairman: Procedure if person objecting alleges that work will cost more than three hundred rupees.

(Secs. 178-181.)

Provided that in any case in which the Chairman or Vice-Chairman shall have certified his opinion as aforesaid, and the objection shall in consequence thereof have been heard and disposed of by the Chairman or Vice-Chairman, the person making the objection may, if the requisition made upon him is not withdrawn on the hearing of his objection, pay in the said sum of three hundred rupees to the Commissioners as the cost of executing the work or doing the thing required; whereupon such person shall be relieved of all further liability and obligation, in respect of executing the work or doing the thing required, and in respect of paying the expenses thereof; and the Commissioners themselves shall execute such work or do such thing, and shall exercise all powers necessary therefor.

Chairman,
etc., may
make order
after hearing
objection.

178. The Chairman or Vice-Chairman, or the Commissioners at a meeting, as the case may be, shall, after hearing the objection and making any inquiry which they may deem necessary, record an order withdrawing, modifying or making absolute the requisition against which the objection is preferred; and, if such order does not withdraw the requisition, it shall specify the time within which the requisition shall be carried out, which shall not be less than the shortest time which might have been mentioned under this Act in the original requisition.

Order to be
explained
orally.

179. If the person making such objection be present at the office of the Commissioners, the said order shall be explained to him orally; and, if such order cannot be so explained, notice of such order shall be served as provided in section 356 on the person making the objection; and such explanation of, or service of, the notice of the said order shall be deemed a requisition duly made under this Act to execute the work or do the thing required.

Power of
Commis-
sioners on
failure of
person to
execute work.

180. If the person or persons required to execute the work or to do the thing fail, within the time specified in any requisition as aforesaid, to begin to execute such work or to do such thing, and thereafter diligently to continue the same to the satisfaction of the Commissioners until it is completed, the Commissioners or any person authorized by them in that behalf, may, after giving forty-eight hours' notice of their intention by a notification to be posted up on or near the spot, enter upon the land and perform all necessary acts for the execution of the work or doing of the thing required; and the expenses thereby incurred shall be paid by the owners or by the occupiers, if such requisition was addressed to the owners or to the occupiers respectively, and by the owners and the occupiers, if such requisition was addressed to the owners and the occupiers.

Commis-
sioners may
apportion

181. Whenever any expenses incurred by the Commissioners are to be paid by the owners of any land as provided in the last preceding

(Secs. 182-186.)

section, the Commissioners may, if there be more than one owner, apportion the said expenses among such of the owners as are known in such manner as to the Commissioners may seem fit. expenses among owners.

And whenever any such expenses are to be paid by the occupiers of any land, as provided in the last preceding section, the Commissioners may, if there be more than one occupier, apportion the said expenses among such of the occupiers as are known in such manner as to the Commissioners may seem fit.

182. Whenever any expenses incurred by the Commissioners are to be paid by the owners and occupiers of any land, as provided in section 180, the Commissioners may apportion the said expenses among the said owners and occupiers or such of them as are known in such manner as to the Commissioners may seem fit. Apportionment among owners and occupiers.

183. Whenever any works or any alterations and improvements of which the Commissioners are authorized by this Part or Part VI to require the execution are executed by the occupier on the requisition of the Commissioners, or are executed by the Commissioners, and the cost thereof is recovered from the occupier, the cost thereof may, if the Commissioners shall certify that such cost ought to be borne by the owner, be deducted by such occupier from the next and following payments of his rent due or becoming due to such owner, or may be recovered by him in any Court of competent jurisdiction. Occupier may recover cost of works executed at his expense from owner.

184. Any owner, or occupier of land may contest his liability to pay any expenses or fees under this Part or Part VI, or may contest the amount which he has been called upon to pay in a Civil Court of competent jurisdiction: Liability to pay expenses or fees may be contested in Civil Court.

Provided that the fact of such action having been instituted shall be no bar to the recovery of the said amount, in the manner provided by section 360.

185. Where any damages or compensation, other than compensation payable under section 35, are by this Act directed to be paid by the Commissioners, the amount, and, if necessary, the apportionment of the same, shall, in case of dispute, be ascertained and determined by a Civil Court of competent jurisdiction. Damages and compensation how to be determined.

Of Sewage, Offensive Matter, Rubbish, Privies and Drains.

186. The Commissioners shall provide all establishments cattle, carts and implements required^[1] [by them] for the removal of sewage, offensive matter and rubbish. Establishments for removal of sewage, offensive matter and rubbish.

[¹] These words "by them," in s. 186, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 53, in Vol. III of this Code.

(Secs. 187-191.)

Hours and mode of removal of offensive matter.

187. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which it shall be lawful to remove [¹] [sewage and] offensive matter and the manner in which the same shall be removed, and may provide places convenient for the deposit thereof, and may require the occupiers of houses to cause the same to be deposited daily, or at other stated intervals, in such places, and may remove the same at the expense of the occupier from any house if the occupier thereof fails to do so in accordance with this Act.

Meheters must give one month's notice if they leave the service of the Commissioners.

188. Whenever such order shall have been published, no *meheter* or other servant of the Commissioners employed to remove or deal with sewage, offensive matter or rubbish shall withdraw from his duties without the permission of the Commissioners, unless he has given notice in writing not less than one month previously of his intention so to withdraw.

Any *meheter* or other such person who, after the said publication, withdraws from his duties without giving such notice as aforesaid shall be liable to rigorous imprisonment for a term not exceeding one month, and shall forfeit all salary which may be due to him.

Commissioners may appoint hours for placing rubbish on public road.

189. The Commissioners at a meeting may, from time to time, by an order published as prescribed in section 354, appoint the hours within which only every occupier of any house or land may place rubbish on the public road adjacent to his house or land in order that such rubbish may be removed by the Commissioners and the Commissioners may charge such fees as they may think fit in respect of the removal of such rubbish, with the consent of the occupier of any house or land, from such house or land, or in respect of the removal from such public road of any rubbish which has accumulated in the exercise of a trade or business.

Drains, privies and cesspools under control of Commissioners.

190. All drains, privies and cesspools shall be subject to the inspection and control of the Commissioners.

Inspection of drains, privies and cesspools.

191. The Commissioners, or any officer authorized by them in that behalf, may inspect all privies, drains and cesspools at any time between sunrise and sunset, *after six hours' notice in writing* to the occupier of any premises in which such privies, drains or cesspools are situated, and may, if necessary, cause the ground to be opened

[¹] The words "sewage and" in s. 187, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 54, in Vol. III of this Code.

(Secs. 192-196.)

where they or he may think fit for the purpose of preventing or removing any nuisance arising from such privies, drains or cesspools; and the expenses thereby incurred shall be paid by the owner or occupier of such premises.

192. Whenever the Commissioners are satisfied that the existence of such privy, drain or cesspool is attended with risk of disease to the inhabitants of the neighbourhood, they may direct the use of such disinfectants or deodorants as they shall specify in such privy, drain or cesspool, in such quantities or for such time as they shall think fit.

Commissioners may direct the use of disinfectants or deodorants for such drains, privies, etc., as are in a noxious state

The Commissioners shall, if necessary, themselves supply such disinfectants or deodorants for such use at cost price, and the expense thereby incurred shall be considered as an arrear of tax, and be recoverable as such from the owner of such privy, drain or cesspool; or the Commissioners may, if they think fit, order that such expense shall be paid from the municipal fund.

193. The Commissioners may provide and maintain, in sufficient numbers and in proper situations, common privies and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be properly cleansed.

Common privies.

194. The Commissioners may license such necessaries for public accommodation as they from time to time may think proper.

Licensing of public necessaries.

195. Whenever any land being private property, or within any private enclosure, appears to the Commissioners, by reason of thick or noxious vegetation or jungle, or inequalities of surface, to afford facilities for the commission of a nuisance, or by want of drainage to be in a state injurious to health or offensive to the neighbourhood, the Commissioners may require the owners or occupiers, or the owners and occupiers, of such land, within fifteen days, to clear and remove such vegetation, or level such surface or drain such land:

Power to require owners to clear noxious vegetation and to improve bad drainage.

Provided that, if for the purpose of effecting any drainage under this section it shall be necessary to acquire any land not being the property of the person who is required to drain his land, or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

196. All sewage, rubbish and offensive matter collected by the Commissioners from roads, privies, sewers, cess-pools and other places shall be the property of the Commissioners, who shall have power to sell or otherwise dispose of the same: and the money arising from the sale thereof shall be carried to the credit of the municipal fund.

All rubbish collected to be the property of Municipal Commissioners.

(Secs. 197-200.)

Sewers,
drains, etc.,
under con-
trol of the
Commis-
sioners.

197. All existing public sewers, drains and other conservancy works shall be under the direction and control of the Commissioners, who shall have power to construct any further works of that nature which they may consider necessary.

Of Bathing and Washing Places and Tanks.

All public
streams, etc.,
to be under
direction and
control of
the Commis-
sioners.
Commission-
ers may
make pro-
vision for
drinking
water, bath-
ing-places,
etc.

198. All streams, channels, water-courses, tanks, reservoirs, springs and wells, not being private property, shall, for the purposes of this Act, be under the direction and control of the Commissioners.

199. The Commissioners may, by order published at such places as they may think fit, set apart convenient [¹][wells,] tanks, or [²] parts of rivers, streams or channels, not being private property, for the supply of water for drinking and for culinary purposes: and may prohibit therein all bathing, washing of clothes and animals, or other acts calculated to pollute the water set apart for the purposes aforesaid;

and may similarly set apart a sufficient number of the same for the purpose of bathing;

and a sufficient number for washing animals and clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants.

[³] [The Commissioners may, by an order published at such places as they may think fit, prohibit in the private portion of any stream or channel used as a part of the public water-supply bathing, washing of clothes or animals or any act likely to pollute the water in the public portion of such stream or channel.]

Prohibition
by Commis-
sioners of use
of unwhole-
some water.

[⁴]**199A.** If the Chief Civil Medical Officer of the district certifies that the water in any well, tank or other place situated within a municipality is likely, if used for drinking, to engender or cause the spread of any dangerous disease, the Commissioners may, by public notice, prohibit the removal or use of such water for drinking during a period to be specified in such order.

Power to
require un-
wholesome
tanks or pri-
vate pre-
mises to be
cleansed
or drained.

[⁵]**200.** (1) The Commissioners may require the owner or occupier of any land within eight days, or such longer period as the Commis-

[¹] This word "wells," in s. 199, was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 55, in Vol. III of this Code.

[²] *Sic. Omit or.*

[³] This paragraph was substituted for the original paragraph by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 55, in Vol. III of this Code.

[⁴] Section 199A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 56, in Vol. III of this Code.

[⁵] This section was substituted for the original s. 200 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 57, in Vol. III of this Code.

(Secs. 201-202.)

sioners may fix, either to re-exacavate or fill up with suitable material, at his option, or to cleanse any well, water-course, private tank or pool therein, and to drain off and remove any waste or stagnant water which may appear to be injurious to health or offensive to the neighbourhood :

Provided that if, for the purpose of effecting any drainage under this section, it shall be necessary to acquire any land not being the property of the person who is required to drain his land or to pay compensation to any other person, the Commissioners shall provide such land and pay such compensation.

(2) If under section 180 the Commissioners execute the work of such re-excavation or filling up with suitable material, they may retain possession of the tank or pool, or the site of such tank or pool, and turn the same to profitable account until the expenses thereby incurred shall have been realized.

Commissioners may retain possession of tank or pool until expenses for re-excavation, etc., are realized.

Obstructions and Encroachments on Roads.

201. The Commissioners may close temporarily any road or part of a road for the purpose of repairing such road, or for the purpose of constructing any sewer, drain, culvert or bridge, or for any other public purpose :

Power to close a road or part of a road for repairs or other public purpose.

Provided that the Commissioners so closing any road shall be bound to provide reasonable means of access for persons occupying holdings adjacent to such road.

Whenever, owing to such repairs or constructions or from any other cause, any road or part of a road shall be in a state which is dangerous to passengers, the Commissioners shall cause sufficient barriers or fences to be erected for the security of life and property, and shall cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

202. The Commissioners may issue a notice requiring any person to remove any wall which he may have built, or any fence, rail, post or other obstruction or encroachment which he may have erected, in or on any road or open drain, sewer or aqueduct, after the date on which the District Municipal Improvement Act, 1864,^[1] or the District Towers Act, 1868^[1] or the Bengal Municipal Act, 1876,^[2] as the case may be, took effect in the municipality; or, in case none of the said Acts was in

Removal of future obstructions or encroachments in or on road.

Ben. Act 3 of 1864.
Ben. Act 6 of 1868.
Ben. Act 5 of 1876.

[¹] Ben. Acts 3 of 1864 and 6 of 1868 were repealed by the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), and the latter Act has been repealed by this Act—see Sch. VI, *post*, p. 627.

[²] The Bengal Act 5 of 1876 has been repealed by this Act—see Sch. VI, *post*, p. 627.

(Secs. 203-204.)

force in the municipality before the commence of this Act, then after the date on which this Act may have been extended thereto;

and, if such person shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment; and the expenses thereby incurred shall be paid by the person who erected the same.

No person shall be entitled to compensation in respect of the removal of any wall, fence, rail, post or other obstruction under this section.

Procedure
when person
who erected
obstruction
cannot be
found.

203. If the person who built or erected the said wall, fence, rail, post or other obstruction or encroachment is not known or cannot be found, the Commissioners may cause a notice to be posted up in the neighbourhood of the said wall, fence, rail, post or other obstruction or encroachment, requiring any person interested in the same to remove it, and it shall not be necessary to name any person in such requisition;

and, if the said wall, fence, rail, post or other obstruction or encroachment be not removed in compliance with the requisition contained in such notice within eight days of the posting up of the same, the Magistrate may, on the application of the Commissioners, order that such obstruction or encroachment be removed; and thereupon the Commissioners may remove any such obstruction or encroachment, and may recover the cost of such removal by sale of the materials so removed.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a Court of competent jurisdiction.

Projections
from houses
erected in
future to be
removed.

204. The Commissioners may give notice in writing to the owner or occupier of any house requiring him to remove or alter any projection, encroachment or obstruction erected or placed against or in front of such house which may have been so erected or placed after the date on which the District Municipal Improvement Act, 1864,^[1] or the District Towns Act, 1868^[1] or the Bengal Municipal Act, 1876,^[2] as the case may be, took effect in the municipality; or, in case none of the said Acts was in force in the municipality before the commencement of this Act, then after the date on which this Act may have been extended thereto, if the same overhangs the road or juts into or in any way

Ben. Act 3
of 1864.
Ben. Act 6
of 1868.
Ben. Act 5
of 1876.

[¹] Ben. Act 3 of 1864 and 6 of 1868 were repealed by the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), and the latter Act has been repealed by this Act—see Sch. VI, *post*, p. 627.

[²] The Bengal Act 5 of 1876 has been repealed by this Act—see Sch. VI, *post*, p. 627.

(Secs. 205-208.)

projects or encroaches upon, or is an obstruction to the safe and convenient passage along any road;

or obstructs, or projects, or encroaches into or upon any aqueduct, drain or sewer in such road.

And, if such owner or occupier shall fail to comply with such requisition within eight days of the receipt of the same, the Magistrate may, on the application of the Commissioners, order that such projection, encroachment or obstruction be removed or altered, and thereupon the Commissioners may remove or alter such projection, encroachment, or obstruction, and the expenses thereby incurred shall be paid by the owner or occupier so making default.

No person shall be entitled to compensation in respect of the removal of any projection, obstruction or encroachment under this section.

205. Every order made by the Magistrate under sections 202, 203, 204 or 233 shall be deemed to be an order made by him in the discharge of his judicial duty, and the Commissioners shall be deemed to be persons bound to execute such orders of a Magistrate within the meaning of Act 18 of 1850 (*for the protection of Judicial Officers*).^[1]

206. Whenever any house, part of which projects beyond the regular line of a road or drain, or beyond the front of the house on either side thereof, shall be burnt down or otherwise destroyed, or shall be taken down in order to be rebuilt or repaired, the Commissioners may require the same to be set back, to, or beyond, the line of the road or drain, or the line of the adjoining house, and may pay reasonable compensation to the owner of such house if any damage shall be thereby sustained.

207. Whenever any private house, wall or other erection, or any tree, shall fall down and obstruct any public drain or encumber any public highway, the Commissioners may remove such obstruction or encumbrance at the expense of the owner of the same, or may require him to remove the same within such time as to the Commissioners shall seem fit.

^[2]**208.** The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges thereon bordering

^[1] The Judicial Officers' Protection Act, 1850. It is printed in the General Acts, 1834-67, Ed. 1909, p. 69.

^[2] This section was substituted for the original s. 208 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 58, in Vol. III of this Code. The original section ran thus :—

“ 208. The Commissioners may require the owner or occupier of any land within three days to trim or prune the hedges bordering on any road, and to cut and trim any trees overhanging any road and obstructing the same or causing damage thereto.”

The present section applies to all municipalities in Bengal except Darjeeling, having been repealed in the Darjeeling Municipality by the Darjeeling Municipal Act, 1900 (Ben. Act 1 of 1900), s. 23.

(Secs. 209-210A.)

on any road, and to cut and trim any trees thereon overhanging any road or tank, or any well used for drinking purposes, or obstructing any road or causing, or likely to cause, damage to any road or any property of the Commissioners, or likely to cause damage to any person using any road, or fouling or likely to foul the water of any well or tank.

Of General Conservancy and Improvement.

Wells, tanks,
etc., to be
secured.

209. If any well, tank or other excavation, whether on public or private ground, be, for want of sufficient repairs or protection, dangerous to passengers, the Commissioners shall forthwith, if it appears to them to be necessary, cause a temporary hoard or fence to be put up for the protection of passengers, and may require the owners or occupiers, or the owners and occupiers, of the land on which such tank, well or other excavation is situated, within seven days properly to secure or protect such well, tank or other excavation.

Fencing of
buildings in
a dangerous
state.

[¹]**210.** If any building, or portion of a building, or structure affixed to a building, be deemed by the Commissioners to be in a ruinous state and dangerous to the inmates, if any, of such building or of any other building or to passersby, or if any wall or other structure be deemed by the Commissioners to be in a ruinous state and dangerous to passersby or to any other persons,

they shall forthwith, if it appears to them necessary, cause a proper hoard or fence to be put up for the protection of passersby or of other persons who may be endangered,

and may require the owner or occupier of the building or the owner or occupier of the land to which such building, wall or other structure is affixed, within seven days, to take down, secure or repair such building, wall or other structure, as the case may require.

Commis-
sioners may
require
owners
to pull
down ruins.

[²]**210A.** Whenever it appears to the Commissioners that any building, by reason of being unsecured and untenanted, or by reason of having fallen into ruins, affords facilities for the commission of a nuisance or for the harbouring of snakes or other noxious animals, the Commissioners may require the owner of such building or the owner of the land to which such building is attached, to properly secure the same, or to remove or level such ruins, as the case may require.

[¹] This section was substituted for the original s. 210 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 59, in Vol. III of this Code.

[²] Section 210A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 60, in Vol. III of this Code.

(Secs. 211-216.)

211. If the Commissioners shall have caused any repairs to be made to any house or other structure, and if such house or other structure be unoccupied, the Commissioners may enter upon possession of the same, and may retain possession thereof until the sum expended by them on the repairs be paid to them.

Power to enter upon possession of houses so repaired.

212. The materials of anything which shall have been pulled down or removed under the provisions of section [1][175 and] 210 may be sold by the Commissioners, and the proceeds of such sale may be applied, so far as the same will extend, to the payment of the expenses incurred.

Sale of materials of houses, etc., pulled down.

The surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of the Commissioners or in a court of competent jurisdiction.

213. The Commissioners may, by published order, appoint from time to time certain periods within which any dogs without collars or other marks distinguishing them as private property, found straying in the roads or beyond the enclosures of the houses of the owners of such dogs, may be destroyed; and such dogs may be destroyed in accordance with such order.

Stray dogs to be killed at certain appointed periods.

214. The Commissioners at a meeting may offer rewards for the destruction of noxious animals within the limits of a municipality.

Commissioners may offer rewards for destruction of noxious animals.

215. The Commissioners at a meeting may cause a name to be given to any road and to be affixed in such place as they may think fit, and may also cause a number to be affixed to every house; and in like manner may, from time to time, cause such names and numbers to be altered.

Names of roads and numbers of houses.

Penalties.

216. Any person who in any municipality—

- (1) places or allows his servants to place rubbish on a public road at other than the times appointed by the Commissioners under the provisions of section 189; or
- (2) destroys, pulls down, defaces or alters any name or number put up by the Commissioners under the authority of section 215,

Offences under sections 189 and 215.

[1] The figures and word "175 and," in s. 212, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 61, in Vol. III of this Code.

(Secs. 217-218.)

shall, for every such offence, be liable to a penalty not exceeding twenty rupees.

Occupier not removing filth, etc.

217. Any person who, in any municipality,—

(1) being the occupier of a house in or near a public road keeps, or allows to be kept, for more than twenty-four hours, or for more than such shorter time as may be prescribed by a bye-law, otherwise than in some proper receptacle, any dirt, dung, bones, ashes, night-soil or filth or any noxious or offensive matter, in or upon such house, or in any out-house, yard or ground attached to and occupied with such house, or suffers such receptacle to be in a filthy or noxious state, or neglects to employ proper means to cleanse the same; or

Keeping unlicensed public necessary.

(2) keeps any public necessary without a license from the Commissioners under section 194, or, having a license for a public necessary, suffers such necessary to be in a filthy or noxious state, or neglects to employ proper means for cleansing the same; or

Not keeping private drain, etc., in proper order.

(3) being the owner or occupier of any private drain, privy or cesspool, neglects or refuses, after warning from the Commissioners, to keep the same in a proper state; or

Disobeying order under section 199 or 199A. Erecting obstruction.

(4) disobeys an order passed by the Commissioners under the provisions of section 199 ^[1][or 199A]; or

(5) encroaches upon any road, drain, or sewer, aqueduct or water-course by making any excavation, or by erecting any wall, fence, rail, post or other obstruction,

shall, for every such offence, be liable to a penalty not exceeding fifty rupees.

Disobeying requisition under sections 202, 204, 206, 207 or 208.

218. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 202, 204, 206, ^[2]207 or 208, shall be liable, for every such default, to a penalty not exceeding fifty rupees, and to a further penalty, not exceeding ten rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

[1] The word and figures "or 199A," in s. 217 (4), were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 62, in Vol. III of this Code.

[2] The reference to ss. 206 and 207, in s. 218, was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 63, in Vol. III of this Code.

(Secs. 219-221.)

219. Whoever, being an owner or occupier of any house or land within a municipality, fails to comply with any requisition issued by the Commissioners under the provisions of sections 195, 200, 209, [1] [210 or 210A] shall be liable, for every such default, to a penalty not exceeding one hundred rupees, and to a further penalty, not exceeding twenty rupees, for every day during which the default is continued after the expiration of eight days from the date of service on him of such requisition.

Disobeying requisition under sections 195, 200, 209, 210 or 210A.

PART VI.

OF SPECIAL REGULATIONS.

220. No provision contained in this Part, or in Parts VII, VIII, IX or X, shall apply to any municipality, unless and until it has been expressly extended thereto by the Local Government in the manner provided by the next succeeding section :

Operation of Parts VI, VII, VIII, IX and X.

[2] Provided that, except as is otherwise provided by this Act, in the case of any municipality to which all the provisions of any one of the Parts VII, VIII or IX of the Bengal Municipal Act, 1876, [3] may have been extended, and provided that such provisions were still in force in such municipality immediately before the commencement of this Act; all the provisions of the corresponding Part of this Act, namely, of Parts VI, XI or X, respectively, shall be, and shall be deemed to have always been, in force in such municipality without such provisions being expressly extended thereto :

Saving clause.

Ben. Act 5 of 1876.

221. The Commissioners may apply, in pursuance of a resolution passed at a meeting specially convened to consider the question, to the Local Government, to extend to the municipality all or any of the provisions of this Part, or of Parts VII, VIII, IX or X, or to exclude from the operation of the said provisions, or any of them, any place within the municipality.

Local Government may order the provisions of the said Parts to be in force.

And the Local Government may thereupon make an order [4] accordingly.

[1] The original reference here was to s. 210. A reference to s. 210A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 64. The figures "210 or 210A" were substituted for the original by the Amending Act, 1897 (5 of 1897), Sch. II—see Vol. I of this Code.

[2] This proviso was added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 65, in Vol. III of this Code.

[3] The Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), has been repealed by s. 2 of this Act—see Sch. VI, *post*, p. 627.

[4] For a list of orders made under s. 221, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 222-225.)

Publication
of order.

222. Every such order shall be published in the Calcutta Gazette, and the Commissioners shall, within fifteen days of such publication, cause a copy of the same, with a translation thereof into the vernacular of the district, to be posted up at their office, with a notice of the date on which such order shall take effect, and shall cause the same to be published as prescribed in section 354.

And the said provisions shall come into force in the municipality from the date so fixed:

Provided that the date so fixed shall not be less than fifteen days after the publication under the said section, or more than three months after the publication of the order of the Local Government as aforesaid in the Calcutta Gazette.

Local
Government
may cancel
or modify
order.

223. The Local Government, on a similar application made by the Commissioners, may, at any time, cancel or modify^[1] an order made under section 221, and such cancellation or modification shall be published and shall take effect in the manner prescribed by the last preceding section.

[²]OF A SURVEY.

Survey of a
municipality.

[²]**223A.** The Commissioners at a meeting may order that a survey shall be made of the lands situated in the municipality, and thereupon all the provisions of the Calcutta Survey Act, 1887,^[3] shall, so far as of 1887. **Ben. Act 1** may be practicable, apply and be extended to such municipality.

OF PRIVIES, DRAINS AND EXCAVATIONS.

Commis-
sioners
may require
owner or
occupier to
repair drain,
etc.
Privies must
be properly
enclosed.

224. The Commissioners may require the owners or occupiers, or the owners and occupiers, of any land, within fifteen days, to repair and make efficient any *drain*, privy or cesspool, or to remove any privy or close any cesspool which is situated on such land.

225. Every person constructing a privy shall have such privy shut out by a sufficient roof and wall or fence from the view of persons passing by, or residing in, the neighbourhood: and the Commissioners may require any owner or occupier of land on which a privy stands to cause the same to be shut out from view as aforesaid within fifteen days.

[¹] For a list of orders made under s. 223, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] This heading and s. 223A were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 66, in Vol. III of this Code.

[³] Printed, *post*.

(Secs. 226-230.)

226. If any person, without the written consent of the Commissioners first obtained, makes or causes to be made, or alters, or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners, the Commissioners may cause such branch drain to be demolished, altered, re-made or otherwise dealt with as they shall think fit; and the expenses thereby incurred shall be paid by the person making or altering such branch drain.

Unauthorised drains leading into public sewers may be demolished.

227. If any land, being within one hundred feet of a sewer, drain or other outlet into which such land may, in the opinion of the Commissioners, be drained, is not drained to the satisfaction of the Commissioners, the Commissioners may require the owner within one month to drain the said land into such sewer, drain or outlet.

Commissioners may require owner to drain land.

228. If it appear to the Commissioners that a group or block of houses may be drained or improved more economically or advantageously in combination than separately, and a sewer, drain or other outlet already exists within one hundred feet of any part of such group or block of houses, the Commissioners may cause such group or block of houses, to be so drained and improved;

Group or block of houses, etc., may be drained by a combined operation.

and the expenses thereby incurred shall be recovered from the owners of such houses, in such proportions as shall to the Commissioners seem fit.

229. If any branch drain, privy or cesspool be constructed contrary to the directions and regulations of the Commissioners, or contrary to the provisions of this Act, or if any person, without the consent of the Commissioners, constructs, re-builds or unstops any *branch drain*, privy or cesspool which has been ordered by them to be demolished or stopped up, or not to be made, the Commissioners may cause such amendment or alteration to be made in any such *drain*, privy or cesspool as they think fit, or may cause the same to be removed;

Commissioners may alter any *drain*, etc., made contrary to their orders.

and the expenses thereby incurred shall be paid by the person by whom such *drain*, privy or cesspool was improperly constructed, re-built or unstopped.

230. No person shall, without the written permission of the Commissioners, construct or keep any latrine, urinal, cesspool, house-drain or other receptacle for sewage or other offensive matter within fifty feet of any public tank or water-course, or a tank or water-course which the inhabitants of any locality use.

No latrine, etc., to be constructed within fifty feet of tank or water-course.

The Commissioners may require any owner and occupier upon whose land any latrine, urinal, cesspool, house-drain or other receptacle so situated exists, or may hereafter be constructed, to remove the same within eight days.

(Secs. 231-233.)

Construction
of privy.

231. No person shall, without the written permission of the Commissioners, construct a privy with a door or trap-door opening on to any road or drain. The Commissioners may require any owner or occupier upon whose land any such privy exists to remove the same within eight days.

Power to
prohibit
excavations.

232. The Commissioners at a meeting may, by a general order, prohibit the making of excavations for the purpose of taking earth or stone therefrom, or for the purpose of storing rubbish or offensive matter therein, and the digging of cesspools, tanks or pits without special permission previously obtained from them.

If any such excavation, cesspool, tank, or pit is made after the issue and publication of such order without such special permission, the Commissioners may require the owners and occupiers of the land on which such excavation, cesspool, tank or pit is made, within two weeks, to fill up such excavation.

OF OBSTRUCTIONS AND ENCROACHMENTS ON ROADS.

Removal of
existing
projections
from houses

233. The Commissioners at a meeting may determine on the removal or alteration, as they shall think fit, of any projection, encroachment or obstruction which may have been erected or placed against, or in front of, any house on any road within the limits of the municipality before the date on which the District Municipal Act, 1864,^[1] or the District Towns Act, 1868,^[2] or the Bengal Municipal Act, 1876,^[2] as the case may be, came into force in the municipality, or in case none of the said Acts was in force in the municipality before the commencement of this Act, then before the date on which this Act may have been extended thereto.

Ben. Act 3
of 1864.
Ben. Act 6
of 1868.
Ben. Act 5
of 1876.

Notice in writing shall be given to the owner or occupier of such house requiring him to remove or alter the said projection, encroachment or obstruction, or to show cause before the Commissioners why he should not be required so to do;

and, if such owner or occupier shall fail to comply with such requisition within thirty days of the receipt of the same, or if after such owner or occupier shall have shown cause against being required to remove or alter the said projection, encroachment or obstruction, the Commission-

[¹] Ben. Acts 3 of 1864 and 6 of 1868 were repealed by the Bengal Municipal Act, 1876 (Ben. Act 5 of 1876), and the latter Act has been repealed by this Act—see Sch. VI, *post*, p. 627.

[²] The Bengal Act 5 of 1876 has been repealed by this Act—see Sch. VI, *post*, p. 627.

(Secs. 234-236.)

ers shall make an absolute order directing such removal or alteration ;

and, if such owner or occupier shall fail to comply with such order within fifteen days of the date of the same, the Magistrate may, on the application of the Commissioners, order such projection, encroachment or obstruction to be removed or altered ; and thereupon the Commissioners may remove or alter such projection, encroachment or obstruction.

The Commissioners shall make reasonable compensation to every person who suffers damage by any removal or alteration under this section.

In determining the amount of compensation, the value of the land shall not be taken into consideration.

234. The Commissioners may grant permission to any person, for such period as they may think fit, to deposit any movable property on any road, or to make an excavation in any road, or to enclose the whole or any part of any road, and may charge such fees as they may fix for such permission : Leave to deposit materials on, or to excavate or close a road.

Provided that such person undertakes to make due provision for the passage of the public and to erect sufficient fences to protect the public from injury, danger or annoyance, and to light such fences from sunset to sunrise sufficiently for such purpose.

235. Every person intending to build or take down any house, or to alter or repair the outward part of any house, shall, if any public road will be obstructed or rendered inconvenient by means of such work, before beginning the same, cause sufficient hoards or fences to be put up in order to separate the house where such works are being carried on from the road, and shall keep such hoard or fence standing and in good condition, to the satisfaction of the Commissioners, during such time as the public safety or convenience requires, and shall cause the same to be sufficiently lighted during the night : Hoards to be set up during repairs.

Provided that no person shall put up a hoard or fence without the written permission of the Commissioners, nor shall he keep up the said hoard or fence for a time longer than allowed in the said written permission.

OF BUILDING REGULATIONS.

236. The Commissioners at a meeting may, [¹][by an order published in the manner prescribed in section 354,] direct that within certain limits, Roofs and external walls not to be made of inflammable materials.

[¹] These words and figures " by an order published in the manner prescribed in s. 354 " were inserted in this section by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 67, in Vol. III of this Code.

(Secs. 237-238.)

to be fixed by them, the external roofs and walls of huts or other buildings which may thereafter be erected, or the roofs or walls of which may thereafter be renewed or repaired, shall not be made of grass, leaves, mats or other inflammable materials.

Notice of erecting a house not being a hut.

[¹]237. (1) Every person who intends to erect or re-erect any house, not being a hut, shall give notice in writing of his intention to the Commissioners, and shall accompany such notice with a general description of the building which he intends to erect, and of the provision he intends to make in respect of drainage and latrine accommodation; and the Commissioners may within six weeks after the receipt of such notice, either refuse to sanction the said building or may sanction the said building either absolutely or subject to any written directions which the Commissioners may deem fit to issue in accordance with the rules, if any, made under sections 241:

Provided that the Commissioners shall make full compensation to the owner for any damage which he may sustain in consequence of the prohibition of the re-erection of any house, or of their requiring any land belonging to him to be added to the street.

(2) Any person giving notice to the Commissioners under this section shall, if required to do so by any rule,^[2] forward with his notice a plan and specification of the house, not being a hut, which he intends to erect or re-erect, together with a site-plan of the land, of such character, and with such details as the rule may require; and no notice under this section shall be valid until such plans and specification have been supplied.

Commissioners may order a house not being a hut erected without notice, etc., to be altered or demolished.

[³]238. (1) Should any person commence to erect or re-erect such house, not being a hut, without giving notice, or without submitting such plans and specification as aforesaid,^[4] [or without waiting for the orders of the Commissioners for six weeks from the date of his giving notice in writing under section 237], or in contravention of any legal order of the Commissioners issued within six weeks of receipt of a valid notice under the last preceding section, the Commissioners may, by notice, to be delivered within fifteen days, require the building to be altered or demolished, as they may deem necessary.

[¹] These ss. 237 to 241 were substituted for the original ss. 237 to 241 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 68, in Vol. III of this Code.

[²] For a list of rules under this head see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] See foot-note [¹] on this page. *ante*.

[⁴] These words and figures in square brackets in this s. 238 were inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 12, in Vol. III of this Code.

(Secs. 239-241.)

(2) Should the Commissioners neglect or omit for six weeks after the receipt of a valid notice under the last preceding section to make and deliver to the person who has given such notice any order in respect thereof, they shall be deemed to have sanctioned the proposed house absolutely:

Provided that no rule under section 241 and no legal order shall be held to have been contravened by anything done in accordance with plans and specifications forwarded to the Commissioners under section 237 and not objected to by them.

[¹]239. Every sanction for the erection or re-erection of any house, not being a hut, which shall be given or deemed to be given by the Commissioners, shall be available for one year from the date on which the notice shall have become valid and complete, and no longer; and should the house so sanctioned not have been begun by the person who has obtained such sanction, or some one lawfully claiming under him within such year, it shall not be begun without fresh sanction, but such person as aforesaid may, at any subsequent time, give fresh notice to the Commissioners in the manner hereinbefore prescribed, and thereupon the provisions hereinbefore contained shall apply to such notice.

[¹]240. The expression "erect or re-erect any house, not being a hut," as used in the two last preceding sections, includes:—

- (a) any material alteration or enlargement of any building;
- (b) such alterations of the internal arrangements of a house as effect an alteration of its drainage or sanitary arrangements, or affect its stability.

Sanction available for one year only.

Definition of expression "erect or re-erect any house, not being a hut."

[¹]241. (1) The Commissioners at a meeting may from time to time make, repeal or alter, rules [²] to regulate the erection or re-erection of houses, not being huts, within the municipality in respect of all or any of the following matters:—

- (a) the materials and method of construction to be used for external and party walls, roofs, floors, fire-places and chimneys;
- (b) the provision, position and ventilation of drains, privies and cesspools;
- (c) the free passage or way in front of the house;

Power of the Commissioners to make rules as to mode of construction of houses not being huts.

[¹] See foot-note [¹] on p. 580, *ante*.

[²] For a list of rules made under s. 241 (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 242-242A.)

- (d) the space to be left about the house to secure free circulation of air and facilitate scavenging, and for the prevention of fire;
- (e) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;
- (f) the level and width of the foundation, the level of the lowest floor, and the stability of the structure;
- (g) the number and height of the storeys of which the house may consist;
- (h) the means to be provided for egress from the house in case of fire;
- (i) the line of frontage with neighbouring houses if the house abuts on a street.

(2) Rules under this section, not inconsistent with the Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

(3) If in and during the erection or re-erection of any house, any rule under this section is contravened, the Commissioners may, by notice to be delivered within fifteen days, require the building to be altered, or, if necessary, demolished, within the space of thirty days, so as to secure conformity to such rule.

(4) This section shall not take effect in a municipality until it has been specially extended^[1] thereto by the Local Government at the request of the Commissioners at a meeting.

Commissioners may prohibit letting of unstable or ill-drained house.

[²]242. The Commissioners may prohibit the owner of any house, not being a hut, from letting it for occupation, if in their opinion it is unstable, or if the drainage or latrine accommodation of such house is in their opinion defective, until its stability shall have been secured or such defects in drainage or latrine accommodation shall have been made good to their satisfaction.

Appeals from orders of Commissioners.

[³]242A. (1) Any person aggrieved—

- (a) by the prohibition by the Commissioners under section 237 of the erection or re-erection of a house, not being a hut, or

[¹] For a list of orders made under s. 241 (4), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI, opposite s. 221 of Ben. Act 3 of 1884.

[²] This s. 242 was substituted for the original section by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 69, in Vol. III of this Code.

[³] This s. 242A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 70, in Vol. III of this Code.

(Secs. 243-244.)

(b) by a notice from the Commissioners under section 238 or sub-section (3) of section 241, requiring the alteration or demolition of a building, or

(c) by any order made by the Commissioners under the powers conferred upon them by section 242,

may appeal within thirty days from the date of such prohibition, notice or order, to the Commissioners; and every such appeal shall be heard and determined by not less than three Commissioners, who shall be appointed in that behalf by the Commissioners at a meeting, and no such prohibition, notice or order shall be liable to be called in question otherwise than by such appeal.

(2) The appellate authority may, for sufficient cause, extend the period allowed by sub-section (1) of this section for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the prohibition, notice or order appealed from shall be final:

Provided that the prohibition, notice or order shall not be modified or set aside until the appellant and the Commissioners have had reasonable opportunity of being heard.

243. It shall not be lawful for any person to erect a hut, or any range or block of huts or sheds, or to add any hut or shed to any range or block already existing, or to enlarge any existing hut, without [1][one month's] previous notice to the Commissioners; and the Commissioners may require such huts or sheds to be built so that they may stand in regular lines, with a free passage or way, in front of [2][each line] and between [3][every two lines] of such width as they may think proper for ventilation and to facilitate scavengering, and with such number of privies, and with such means of drainage, as to them may seem necessary, and at such a level as will admit of such drainage, and with a plinth at least two feet above the level of the nearest street.

244. If any such huts or sheds be built without giving such notice to the Commissioners, or otherwise than as required by the Commissioners, the Commissioners may require the owners of the land on which such huts and sheds are built, and the occupiers of such huts and sheds, to take down and remove the same within one month, or to effect such alterations as they may deem necessary.

[1] These words "one month's," in this s. 243, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 71, in Vol. III of this Code.

[2] These words "each line," in this s. 243, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 71, in Vol. III of this Code.

[3] These words "every two lines," in this s. 243, were substituted for the words "each line" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 71, in Vol. III of this Code.

Erection of new huts to be under the control of the Commissioners.

Power to direct removal of huts built without notice.

(Secs. 245-249.)

OF SANITARY MEASURES WITH REGARD TO BLOCKS OF HUTS.

Power of Commissioners as to inspection of hut.

245. Whenever the Commissioners at a meeting are satisfied, from inspection, or by report of competent persons, that any existing block of huts within the municipality is, by reason of the manner in which the huts are constructed or crowded together, or of the want of drainage and the impracticability of scavengering, attended with risk of disease to the inhabitants of the neighbourhood, they may cause the locality to be inspected by two medical officers, who shall make a report in writing on the sanitary condition of the said block of huts; and shall specify, if necessary, in the said report, the huts which should be removed, the roads, drains and sewers which should be constructed, and the low lands which should be filled up, with a view to the removal of the said risk of disease.

On receipt of report, Commissioners may cause notice to be served.

246. On receipt of the said report, the Commissioners at a meeting may require the owners or occupiers of the huts, or, at the option of the Commissioners, the owner of the land on which such huts are built, to carry out and execute, within a reasonable time to be fixed by the Commissioners for such purpose, all or any of the works specified in the afore-said report or any portion thereof respectively, and, if such owner, owners or occupiers shall fail to comply with such requisition, the Commissioners themselves may execute all or any of such works.

Expenses may be recovered by instalments or remitted in case of poverty.

247. The Commissioners at a meeting may order that any expenses payable in respect of any work done by them in consequence of the failure of the owners or occupiers to execute such work when required to do so under the last preceding section shall be recovered by instalments from the person liable to pay the same; or if it should appear to them that the said person is unable by reason of poverty to pay the same, may order the same, or any portion thereof, to be paid out of the municipal fund.

Sale of huts.

248. If any of the said huts be pulled down, the Commissioners shall cause the materials of each hut to be sold separately, if such sale can be effected, and the proceeds shall be paid to the owner of the hut, or, if the owner be unknown, or the title disputed, shall be held in deposit by the Commissioners, until the person interested therein shall obtain the order of a Civil Court of competent jurisdiction for the payment of the same.

OF THE REGULATION OF THE SALE OF FOOD, DRINK AND DRUGS.[¹]

Markets, slaughter-houses, etc., to be properly drained.

249. Every owner, or occupier, or farmer, of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter-house, within

[¹] For further provisions as to slaughter-houses and meat and fish markets, see the Bengal Municipal (Slaughter-houses and Meat Markets) Act. 1865 (Ben. Act 7 of 1865), ante, p. 37.

(Secs. 250-251.)

the limits of a municipality, shall cause such drains to be made therein as shall be considered sufficient by the Commissioners, and (if required so to do by the Commissioners) shall cause all the floors and drains to be paved with stone or burnt brick, and shall also cause a supply of water to be provided, sufficient for keeping such place or slaughter-house in a clean and wholesome state.

250. Any Magistrate, on the application of the Commissioners or any of their officers setting forth that there is just cause to believe that any article which has been rendered or has become noxious or unfit for use as food or drink for man, is in the possession of any person for the purpose of being sold or offered or exposed for sale, within the limits of a municipality as food or drink for man, may grant a warrant to enter upon the premises of such person, and to search for and seize such article.

And, if it appear to the said Magistrate that the same is noxious or unfit for such use, he shall order it to be forfeited and disposed of in such way as to him shall seem proper.

[¹]251. No person shall sell to the prejudice of the purchaser any article of food which is not of the nature, substance or quality of the article demanded by such purchaser under a penalty not exceeding one hundred rupees:

Prohibition of the sale of articles of food not of the proper nature, substance or quality.

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say:—

- (1) where any matter or ingredient not injurious to health has been added to the food, because the same is required for the production or preparation thereof as an article of commerce, in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure of the food, or conceal the inferior quality thereof;
- (2) where the food is unavoidably mixed with some extraneous matter in the process of collection or preparation.

The term “ food ” shall include every article used for food or drink by man other than drugs or water.

In any prosecution under this section it shall be no defence to allege that the purchaser, having bought only for analysis, was not prejudiced by the sale:

[¹] This section was substituted for the original s. 251 by the Bengal Municipal (Amendment) Act, 1886 (Ben. Act 3 of 1886), s. 2, *post*, p. 717.

(Secs. 251A.-252.)

No proceedings to be had without leave of the Commissioners.

Power of Commissioners to enter and inspect markets, shops, etc., and to seize unwholesome articles exposed for sale.

Power to destroy unwholesome articles.

Person refusing to sell any article to Commissioners liable to penalty.

Registry of shops for sale of European drugs.

Certificated dispensers.

[¹]251A. No proceedings shall be instituted under the last preceding section without the order or consent of the Commissioners.

[¹]251B. The Commissioners, or any person authorized by them in that behalf, may, at all reasonable times, enter into and inspect any market, building, shop, stall or place used for the sale or storage of articles intended for food, or as a slaughter-house, and may examine any such articles which may be therein, and, if upon examination such articles, or any of them, appear to be unfit for food, may seize the same.

[¹]251C. Upon the seizure of any article of food under the last preceding section, the same may, if the owner or the person in whose possession the same is found consents, be forthwith destroyed or so disposed of as to prevent it being used as food, but, if the owner or the person in whose possession the same is found do not consent, then, if it appear to a Magistrate upon sufficient evidence that the same is unfit for food, he shall order the same to be destroyed or so disposed of as to prevent it being used as food, and may impose a penalty not exceeding one hundred rupees upon the owner, or person in whose possession the same was found, such person not being merely a carrier or bailee thereof.

[¹]251D. If the Commissioners, or any person authorized by them in that behalf, shall apply to purchase any article of food exposed to sale, and shall tender the price for quantity not more than shall be reasonably requisite for the purpose of analysis, and the person exposing the same for sale shall refuse to sell the same, such person shall be liable to a penalty not exceeding fifty rupees.

252. No shop or place shall be kept for the retail sale of drugs recognized by the British Pharmacopœia, not being also articles of ordinary domestic consumption, unless the same shall have been registered in the office of the Commissioners. Any keeper of such shop or place failing to register the same within two months after this section shall come into force, or within two months from the date of the establishment of such place, shall be liable to a fine not exceeding one hundred rupees. The Commissioners shall, upon registration, grant the keeper of such shop or place a license which he shall be bound to display in some conspicuous part of his premises.

No person shall compound, mix, prepare, dispense or sell any drug in any such registered shop or place unless he be duly certified as a fit

[¹] Sections 251A to 251D were inserted by the Bengal Municipal (Amendment) Act, 1886 (Ben. Act 3 of 1886), s. 3, *post*, p. 717.

(Secs. 253-254.)

person to be entrusted with such duties under rules^[1] made for that purpose by the Local Government:

Provided that the provisions contained in the second clause of this section shall not come into operation until after the expiration of a period of six months from the publication of a notification^[2] to that effect in the Calcutta Gazette by the Local Government.

Nothing in this section contained shall be construed to apply to the sale of drugs used by practitioners of indigenous medicines, whether recognized by the British Pharmacopœia or not, when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopœia are dispensed upon prescription.

253. The Commissioners, or any person authorized by them in that behalf, may at all reasonable times enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, may remove the same on giving a receipt therefor, specifying the nature and quantity of the drug removed, and its approximate value; and if it appear to a Magistrate that the said drug, removed as aforesaid, is adulterated or has become inert, unwholesome or deteriorated, as aforesaid, he may order the same to be destroyed, or to be so disposed of as to him may seem fit. Inspection of drugs.

If it shall appear to the said Magistrate that the drug so removed is not adulterated or has not become inert, unwholesome or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Magistrate to award him such compensation as he may think proper, not exceeding the actual loss which has been sustained. Compensation, if drugs be not adulterated.

If the drug removed as aforesaid is not brought before a Magistrate, it shall be restored to the person from whose shop or place it was taken, and such person shall be entitled to compensation for any actual loss which he may have sustained by the removal of the said drug.

OF BURIAL AND BURNING GROUNDS.

254. Within three months from the date on which this and the six^[3] next succeeding sections may come into force as provided in sec- Registration of existing burial and burning grounds.

[¹] For rules made under s. 252, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] For a list of orders made under this proviso, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI, opposite s. 221 of Ben. Act 3 of 1884.

[³] i.e., ss. 255, 256, 257, 258, 259 and 260.

(Secs. 255-257.)

tion 222, every place which is used as a burial or burning ground for corpses shall be registered as such by the owner thereof in the office of the Commissioners, but no fee shall be charged for such registry.

No new or disused burial or burning place henceforth to be used without leave of Government or of Commissioners.

255. No burial or burning ground, whether public or private, shall be made or formed, or, having lapsed into disuse, shall be again used as such, otherwise than with the permission of the Commissioners, or under the authority of the Local Government.^[1]

Commissioners may order certain burial or burning grounds to be closed.

256. If it shall appear to the Commissioners at a meeting that any public or private burial or burning ground is dangerous to health or offensive to the tax-payers, or to the inhabitants of the neighbourhood, and also that a suitable place for interment or burning, as the case may be, exist within a convenient distance, and is open and available to the inhabitants of the municipality, the Commissioners shall give public notice of their intention to close such burial or burning ground, and shall consider any objections which may be preferred within fifteen days of the publication of such notice; after considering such objections, they may, by notification to be affixed on some conspicuous part of the ground, appoint a time, not being less than two months, for the closing of such burial or burning ground.

If any building is attached to, and used in connection with a burning ground closed under this section, the Commissioners shall, if the owner of such building make an application to them in that behalf, take over the same on payment of a fair price therefor.

Private burial places may be excepted.

^[2]**256A.** When notice is given of the intention to close any burial-ground under the last preceding section, private burial-places in such burial-grounds may be excepted from the notice, subject to such conditions as the Commissioners at a meeting may impose in this behalf:

Provided that the limits of such burial-places are defined, and that they shall only be used for the burial of members of the family of the owners thereof.

Appeals from orders under sections 256 and 256A.

^[2]**256B.** Any person aggrieved by any order made by the Commissioners under the powers conferred upon them by the two last preceding sections may appeal to the Magistrate, whose decision shall be final.

Prohibition to bury or burn in unregistered ground.

257. After the expiration of the three months mentioned in section 254, no corpse shall be buried or burnt otherwise than in a place which

^[1] As to the delegation to Commissioners of Divisions of the Local Government's power, see s. 29A, *ante*, p. 515.

^[2] Sections 256A and 256B were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 72, in Vol. III of this Code.

(Secs. 258-261.)

is borne on the register of the Commissioners as an open burial or burning ground; but the Commissioners may grant special permission for a corpse to be buried or burnt elsewhere.

258. After the expiration of not less than twenty-four hours from the death of any person, the Commissioners may cause the corpse of such person to be burnt or buried, and the expenses thereby incurred shall be recoverable as a debt due from the estate of such person. In every such case the corpse shall be disposed of, so far as may be possible, in a manner consistent with the religious tenets of the deceased.

259. The Commissioners at a meeting may, from time to time, out of the municipal fund, with the sanction of the Local Government^[1] to provide fitting places to be used as burial or burning grounds, and may impose a fee not exceeding two rupees in respect of every corpse buried or burnt within such burial or burning grounds.

260. The Commissioners at a meeting may, from time to time, out of the municipal fund, provide for the burial and burning of paupers free of charge within the limits of the municipality.

^[2]**260A.** (1) The Commissioners may, from time to time, grant licenses to persons applying for the same, for the sale at burning grounds of fuel and other articles used for the cremation of dead bodies, and in case any such license shall be granted shall, at a meeting, prescribe a scale of rates for the sale of such articles; and any person not so licensed, who shall, within three hundred yards of any such burning ground, sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

(2) The Commissioners may, on good and sufficient cause, revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled, and shall be liable also to a fine not exceeding ten rupees.

OF CERTAIN OFFENSIVE AND DANGEROUS TRADES OR OCCUPATIONS.

261. Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used without a license from the Commissioners.

^[1] As to the delegation to Commissioners of Divisions of the Local Government's power, see s. 29A, *ante*, p. 515.

^[2] Section 260A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 73, in Vol. III of this Code.

Commissioners may cause corpses to be burnt or buried according to the religious tenets of the deceased.

Commissioners may provide places to be used as burial or burning grounds.

Commissioner may provide for burial of paupers free of charge.

Power to license fuel shops at burning grounds.

Certain offensive and dangerous trades not to be established within limits to be fixed by

(Sec. 262.)

the Commis-
sioners
without
license.

missioners, which shall be renewable annually, for any of the following purposes, namely:—

- melting tallow;
- boiling offal or blood;
- skinning or disembowelling animals;
- as a soap-house, oil-boiling house, dyeing-house;
- as a tannery, slaughter-house, or kiln for making bricks, pottery, tiles or lime;
- as a manufactory or place of business from which offensive or unwholesome smells may arise;
- as a yard or depôt for trade in hay, straw, wood, thatching-grass, jute or other dangerously inflammable material;
- as a store-house for kerosine, petroleum, naphtha or any inflammable oil or spirit;
- as a shop for the sale of meat;
- [¹][as a place for the storage of rags or bones, or both;] or as a lodging-house or a *sarai*.

Such license shall not be withheld unless the Commissioners have reason to believe that the business which it is intended to establish or maintain would be offensive or dangerous to persons residing in or frequenting the immediate neighbourhood.

[²][The Commissioners at a meeting may, in accordance with a scale of fees[³] to be approved[⁴] by the Commissioner of the Division, levy a fee in respect of any such license and the renewal thereof, and may impose such conditions upon the grant of any such license as they may think necessary.]

Commission-
ers may, in
certain cases,
order the
use of slaugh-
ter-houses
and the carry-
ing on of
dangerous
and offensive
trades to be
discontinued.

262. If it be shown to the satisfaction of the Commissioners at a meeting that any place licensed under section 261 is a nuisance to the neighbourhood, they may, notwithstanding anything contained in the

[¹] These words in square brackets were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 74 (1), in Vol. III of this Code.

[²] This paragraph was substituted for the original paragraph by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 74 (2), in Vol. III of this Code. The original paragraph ran as follows:—

“The Commissioners may levy a fee in respect of such license and the renewal thereof, and may impose such conditions upon the licensee as they may think necessary.”

[³] Section 261 is repealed, in so far as it entitles the Commissioners to levy fees in respect of premises licensed as depôts for hay, straw, wood, rags, jute or other dangerously inflammable material which are licensed and used as warehouses under the Licensed Warehouse and Fire-Brigade Act, 1893 (Ben. Act 1 of 1893)—see the latter Act, s. 46, in Vol. III of this Code.

[⁴] For a list of orders made by Commissioners of Divisions under this paragraph of s. 262, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 262A.-265.)

said section, give notice to the occupier to discontinue the use of such place within one month after the date of such notice :

[¹] [Provided that in this case the Commissioners shall refund so much of the fee levied under the last preceding section as may be proportionate to the unexpired portion of the year for which the license was granted.]

[²] **262A.** Within such local limits as may be fixed by the Commissioners at a meeting, no place shall be used as a kiln for making bricks, pottery, tiles or lime for private purposes. Commissioners may prohibit private kilns.

263. Within such limits as the Commissioners at a meeting may determine, no milkman, cartman, livery stable-keeper or keeper of hackney carriages, shall keep horses, ponies or cattle * * * [³] for the purposes of trade or business, except in a place licensed by the Commissioners. Milkman, etc., not to keep animals or cattle without license.

The Commissioners may license places for such purpose, and may levy a fee not exceeding one rupee on the issue and renewal of any such license. Such license shall be renewed in the first and seventh months of each year.

It shall be in the discretion of the Commissioners at a meeting to grant any such license subject to such conditions as they may think fit.

264. The Commissioners may provide public stables for the accommodation of horses and cattle, and may direct that, within such limits as they shall at a meeting determine, no person shall keep horses or cattle exceeding ten in number, for the purpose of trade, or business, except in such public stables, or in places licensed under the preceding section. Commissioners may provide public stables.

The Commissioners may charge such reasonable fees as they shall think fit for the use of such public stables.

265. Within such limits as the Commissioners may direct, no person shall keep any pig-sty adjoining or near a road unless it is shut out therefrom by a sufficient wall or fence, and in no place within such limits shall more than ten pigs or more than twenty sheep or goats be kept without the written permission of the Commissioners. Conditions for keeping pig-sty.

The Commissioners may charge an annual fee not exceeding two rupees for such permission, and may impose such conditions in respect of such permission as they may think necessary.

[¹] This proviso was added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 75, in Vol. III of this Code.

[²] Section 262A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 76, in Vol. III of this Code.

[³] The words "exceeding ten in number," in s. 263, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 77, and are omitted.

(Secs. 266-270.)

PENALTIES.

Failing to
shut out
privy from
view.

266. Any person constructing a privy within a municipality, and failing to have it shut out from view, as in section 225 required, shall be liable to a fine not exceeding twenty rupees.

Erecting
huts without
notice.

267. Whoever erects a hut, or any range or block of huts or sheds, or adds to any hut or shed, or to any range or block already existing, contrary to the provisions of section 243, and whoever fails to remove such hut, block of huts or shed when required by the Commissioners to do so, shall be liable to a fine not exceeding twenty rupees for every such offence, and to a further fine, not exceeding five rupees, for each day during which the offence is continued after he has been convicted of such offence.

Disobeying
requisition
under section
249.

268. If any owner, occupier or farmer of any place for the sale of meat, poultry, fish or vegetables, or of any slaughter-house, within the limits of a municipality, after notice in writing given to him by the Commissioners that such place or slaughter-house is defective in any of the particulars specified in section 249, and requiring him to remedy the defect specified within not less than thirty days, makes default therein, he shall be liable to a fine not exceeding twenty rupees for every day during which such default is continued after the expiration of the period mentioned in such notice.

Cutting up
road for
passage of
water, etc.

269. If any person, in order to provide for the passage of water or for any other purpose, shall, without the consent of the Commissioners, dig or cut up any public road or thoroughfare, he shall be liable to a fine not exceeding twenty-five rupees, and shall in addition be bound to pay the expenses incurred in filling up any excavation made by him or on his behalf in any such public road or thoroughfare.

Throwing
rubbish into
sewers.

270. Whoever, within a municipality,—

(1) without the permission of the Commissioners, throws or puts, or permits his servants to throw or put, any sewage or offensive matter on to any road, or who throws or puts, or permits his servants to throw or put, any earth, rubbish, sewage or offensive matter into any sewer or drain belonging to the Commissioners, or into any drain communicating therewith; or

Allowing
water of any
sewer, etc.,
to run on any
road.

(2) causes or allows the water of any sink, sewer or cesspool, or any other offensive matter belonging to him or being on his land, to run, drain or be thrown or put upon any road, or causes or allows any offensive matter to run, drain or be thrown into a surface-drain near any road; or

(Secs. 271-273.)

- (3) constructs a latrine, urinal, cesspool, house-drain or privy in contravention of the provisions of sections 230 and 231; or Constructing latrine, etc., in contravention of sections 230 and 231.
- (4) without the written permission of the Commissioners, digs or makes, or causes or suffers to be dug or made, any excavation, cesspool, tank or pit, in contravention of the provisions of section 232, ^[1][or Making excavations.
- (5) makes or repairs a roof or wall with grass, leaves, mats or other inflammable material in contravention of the provisions of section 236;] Making roof or wall of grass, etc.

shall be liable, for every such offence to a fine not exceeding twenty-five rupees.

271. Whoever, within a municipality, fails to comply with a requisition issued by the Commissioners under the provisions of sections 224, 225, 227, 230, 231 or 238,^[2] shall be liable, for every such offence, to a fine not exceeding twenty-five rupees and to a further fine, not exceeding five rupees for every day during which he shall continue to make such default after service on him of such requisition. Disobeying requisition under section 224, 225, 227, 230, 231 or 238.

272. Whoever, within a municipality,—

- (1) without the written consent of the Commissioners previously obtained, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the Commissioners by this Act; or Altering, etc., drains leading to public sewers.
- (2) constructs any *branch drain*, privy or cesspool contrary to the directions and regulations of the Commissioners or contrary to the provisions of this Act, or, without the consent of the Commissioners, constructs, rebuilds or unstops any *drain*, privy or cesspool which has been ordered by them to be demolished or stopped up or not to be made; Making drains contrary to orders of the Commissioners.

shall be liable, for every such offence, to a fine not exceeding fifty rupees.

273. Whoever, in a municipality,

- (1) begins to build or to take down, or alter or repair any house contrary to the provisions of section 235, ^[3]238 or 241, Offence under section 235, 238, 241 or 242.

[¹] The word "or" in clause (4), and clause (5), of s. 270 were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 78, in Vol. III of this Code.

[²] The figures "224" and "227," in s. 271, were inserted, and the figures and word "231 or 238" were substituted for the word and figures "or 231," by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 79, in Vol. III of this Code.

[³] The figures "238," in this clause (1) of s. 273, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 80, in Vol. III of this Code.

(Secs. 274-275.)

or lets a house for occupation contrary to the provisions of section 242,

or, without written permission, erects or sets up any hoard, scaffolding or fence whatsoever,

or who, being permitted, fails to put up such fence or board, or to continue the same standing, or to maintain the same in good condition,

or who does not, while such hoard or fence is standing, keep the same sufficiently lighted during the night,

or who does not remove the same within eight days, when directed by the Commissioners; or

Offence under section 261, 262A or 263.

(2) without a license uses any place for any of the purposes specified in section 261 or section 263; or [¹][uses any place as a kiln in contravention of the provisions of section 262A: or]

Offence under section 261 or 263.

(3) being a holder of a license under section 261 or section 263, breaks any condition of such license; or

Offence under section 264.

(4) after the issue of an order under section 264, keeps horses or cattle exceeding ten in number in contravention of such order; or

Offence under section 265.

(5) keeps any pig-sty, pigs, sheep or goats contrary to the provisions of section 265,

shall be liable, for every such offence, to a fine not exceeding fifty rupees, and to a further fine not exceeding ten rupees, for every day during which the offence is continued after he has been convicted of such offence.

Burying or burning corpse in unregistered grounds.

274. Whoever, within a municipality, after the expiration of the period mentioned in section 257, knowingly buries or burns, or causes, procures or suffers to be buried or burned, any corpse in or on any ground not registered as a burial or burning ground, shall be liable to a fine not exceeding one hundred rupees.

Offence under section 252.

275. Whoever, within a municipality, uses any such place as is mentioned in section 252, without the same being registered, shall be liable to a fine not exceeding one hundred rupees, and to a further fine not exceeding twenty rupees for each day during which the offence is continued after he has been convicted of such offence.

[¹] The words and figures in square brackets in clause (2) of s. 273 were added by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 80, in Vol. III of this Code.

(Secs. 276-279.)

276. Whoever, within a municipality, **not being the holder of such** Uncertificat-
 certificate as is mentioned in the second clause of section 252, shall com- ed persons
 pound, mix prepare or sell any drugs in any registered shop or place, dispensing
 shall, on conviction before a Magistrate, be liable to a fine not exceeding drugs.
 fifty rupees for each offence; and any owner, occupier or keeper of any
 such shop or place, who shall employ any such uncertified person to
 perform any one or more of such duties, shall on conviction before a
 Magistrate, be liable to a fine not exceeding two hundred rupees, and
 shall be further liable, at the discretion of such Magistrate, to forfeit
 his license :

Provided that this section shall not come into operation until after
 the expiration of a period of six months from the publication of a noti-
 fication^[1] to that effect in the Calcutta Gazette by the Local Govern-
 ment.

277. Whoever, within a municipality, after the expiration of the Suspension or
 time specified in a notice issued by the Commissioners under the pro- revocation of
 visions of section 262, uses, or permits to be used, the place specified license, etc.
 in such notice in such a manner as to be a nuisance to the neighbourhood,
 shall be liable to a fine not exceeding two hundred rupees, and to a
 further fine not exceeding forty rupees for each day during which the
 offence is continued after he has been convicted of such offence.

278. Any Magistrate before whom any person is convicted of an Disobeying
 offence contrary to the provisions of this Act, relating to the use of notice under
 any place for a purpose for which a license is required, or of the non- section 262.
 observance of any of the by-laws relating thereto made under this Act,
 in addition to the fine which may be imposed on such person under
 this Act, may suspend, for any period not exceeding two months, any
 such license.

And the Commissioners, upon the conviction of any person for a
 second or other subsequent like offence, may cancel his license.

 PART VII.

OF A WATER-SUPPLY.

^[2]**279.** (I) In any municipality to which the provisions of this Part Imposition of
 shall be extended in the manner prescribed by section 222, it shall be water-rate.

[1] For a list of notifications issued under this proviso, see the Bihar and Orissa Local
 Statutory Rules and Orders, Vol. I, Pt. VI, opposite s. 221 of Ben. Act 3 of 1884.

[2] This section was substituted for the original s. 279 by the Bengal Municipal (Amend-
 ment) Act, 1894 (Ben. Act 4 of 1894), s. 81, in Vol. III of this Code.

(Sec. 280.)

lawful for the Commissioners at a meeting to impose a water-rate^[1] not exceeding seven and-a-half *per centum* on the annual value of holdings when the houses and lands are situated in any road supplied with water, and not exceeding six *per centum* when the house and lands are situated in any road not so supplied.

[²] [(1a) With the sanction^[3] of the Local Government, the amount of the water-rate imposed under this section may vary with the distance of houses or lands from the nearest stand-pipe or other source of water-supply, and the amount may be higher in the case of premises to which communication pipes are attached than in the case of other premises.

(2) In fixing the amount^[4] [or amounts] of the rate, regard shall be had to the principle that the total net proceeds of the tax, together with the estimated income from payments for water supplied from the works under special contract or otherwise, shall not exceed the amount required for carrying out the purposes of this Part.

(3) The water-rate shall be paid by the occupiers of the holdings by quarterly instalments in advance:

Provided that such water-rate shall not be levied upon—

- (a) any house or land, no part of which is within a radius to be fixed^[5] by the Local Government for each municipality from the nearest stand-pipe or other supply of water available to the public; or
- (b) any land used exclusively for purposes of agriculture; [⁶] [or
- (c) any holding consisting only of tanks:]

Provided also that nothing in this section shall prevent the Commissioners from making any special arrangement consistent with this Act with persons residing beyond the radius fixed by the Local Government.

Valuation,
assessment
and collection
of water rate.

280. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in

[¹] As to the imposition of a water-rate, see also s. 86, *ante*, p. 538.

[²] Sub-section (1a.) was inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 13 (1), in Vol. III of this Code.

[³] For an order made under s. 279 (a), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁴] The words "or amounts," in s. 279 (2), were inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 13 (2), in Vol. III of this Code.

[⁵] For a list of orders made under s. 279 (3) (a), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁶] The matter in square brackets was inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 14, in Vol. III of this Code.

(Secs. 281-284.)

the manner provided in that Part. And the provisions of sections 96 to 109 (both inclusive), and 112 to 130 (both inclusive), shall, *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the water-rate.

281. Whenever the person by whom the water-rate shall have been paid, or from whom the said rate shall have been recovered, is not the owner of the house or land in respect of which the water-rate shall have been assessed, such person may recover from the owner one-fourth of the water-rate so paid or recovered, and may deduct the same from the rent payable by him to such owner.

Occupier paying water-rate may deduct one-fourth from rent due to owner.

282. Whenever any house or land has been unoccupied during an entire quarter, the owner of the said house or land shall pay to the Commissioners one-fourth of the sum which would have been payable as water-rate by the occupier if such house or land had been occupied.

When house is unoccupied, owner to pay one-fourth of water-rate.

The sum payable by the owner under this section shall be deemed to be due on the first day of the quarter following that in respect of which the said sum is payable.

283. Whenever any quarterly instalment of the water-rate shall have been paid in respect of any house or land, and such house or land shall, during the quarter for which such instalment shall have been paid, cease to be occupied, the person who shall have paid such water-rate shall be entitled to be repaid by the Commissioners three-fourths of such sum as shall bear to the amount paid by him the same proportion which the residue of the quarter bears to the entire quarter :

Refund of water-rate when house ceases to be occupied.

Provided that notice shall have been given in writing to the Commissioners of such house or land being unoccupied, and that the application for refund be made within six months next after the date on which the house or land ceased to be occupied.

The date on which the said notice is delivered at the office of the Commissioners shall, for the purposes of this section, be deemed to be the date on which the house or land ceased to be occupied.

284. Whenever any house or land which shall have been unoccupied shall begin to be occupied during any quarter, there shall be forthwith payable by the occupier in respect of such house or land a sum calculated at one-fourth of the rate that would have been payable if the house or land had been occupied during the entire quarter for the period during which the house or land was not occupied, and the full rate for the residue of the quarter.

Rate payable on house being re-occupied.

(Secs. 285-290.)

And such occupier shall be entitled to deduct from the rent, or otherwise recover from the owner, one-fourth of the water-rate that would have been payable if the house or land had been occupied during the entire quarter.

Person sub-letting to several different tenants to be deemed occupier.

285. Whenever any person holding any house or land from the owner thereof has sub-let the same in severalty to two or more persons, the person holding from the owner shall, for the purposes of this Part, be deemed to be the occupier of such house or land.

Owner to pay water-rate in certain other cases.

286. The provisions of sections 312, 313 and 314 shall be applicable to this Part:

Provided that the owner shall not be entitled to recover from any occupying tenant more than three-fourths of the water-rate that would but for this proviso be recoverable by him under the said sections.

The Commissioners to provide water supply.

287. In any municipality to which the provisions of this Part shall be extended, the Commissioners shall provide a supply of water within the limits of the municipality; and for this purpose it shall be lawful for them to cause such mains and pipes to be laid, and such tanks, reservoirs or other works to be made and constructed, as shall be necessary for the supply of water in the chief public streets; and they may also erect in all such streets sufficient and convenient stand-pipes or pumps for the use of the inhabitants of the municipality for domestic purposes.

What are domestic purposes.

288. A supply of water for domestic purposes shall not include a supply of water for animals or for washing carriages, where such animals or carriages are kept for sale or hire, or a supply for any trade, manufacture or business, or for watering gardens or roads, or for any ornamental or mechanical purpose.

Pressure at which water must be kept.

289. The Commissioners at a meeting shall determine what pressure of water shall be maintained in their service-pipes and mains, and during what hours such pressure shall be continued; and any rule made under this section shall be published in such manner as the Commissioners may direct, and shall not be altered except with the sanction of the Commissioners at a meeting.

Communication-pipes.

[¹]**290.** Whenever the Commissioners deem it practicable and consistent with the maintenance of an efficient water-supply, they may, at a meeting and subject to such rules[²] and conditions as the Local Government may make and impose, allow the owners and occupiers paying

[¹] This section was substituted for the original s. 290 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 82, in Vol. III of this Code.

[²] For a list of rules made under s. 290, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 291-293.)

the water-rate hereinbefore mentioned to lay down communication-pipes from the service-pipes of the Commissioners, for the purpose of leading water to their premises for domestic purposes.

291. The communication-pipes and all fittings thereon leading water from the service-pipes of the Commissioners into any house or land, and the pipes, works and fittings inside the house or land, must in all cases be executed subject to the inspection and satisfaction of the Commissioners.

Communication-pipes, etc., must be made to satisfaction of officers of the Commissioners.

Such communication-pipes, works and fittings may be made by the servants and workmen of the Commissioners upon such terms as may be agreed upon between the Commissioners and the person requiring the supply, or subject to such charges as may be fixed by the Commissioners; and the Commissioners may require the amount necessary for the execution of such works to be paid or deposited before such works are executed.

And such charges and expenses shall be recoverable in the same manner as the water-rate.

292. Any officer authorized in that behalf by the Commissioners may, between the hours of seven in the forenoon and five in the afternoon, enter into or on any house or land supplied with water as aforesaid in order to examine all pipes, works and fittings connected with the supply of water, and to ascertain whether there be any waste or misuse of such water.

Power to enter premises.

And, if such officer at any such time be refused admittance into such house or land for the purposes aforesaid, or be prevented from making such examination, the Commissioners may forthwith cut off the supply of water from such house or land :

Provided that nothing hereinbefore contained shall authorize an entry into any room appropriated for the *zanana* or residence of women which, by the custom of the country, is considered private, unless a notice in writing of not less than four hours be given.

293. In the event of any pipes, works or fittings connected with the supply of water to any house or land being at any time found, on examination by any officer of the Commissioners authorized in that behalf, to be out of repair to such an extent as to cause waste of water, the Commissioners may cause the water to be turned off from such house or land, after giving notice in writing of not less than twenty-four hours, and may recover from the occupier of such house or land the expense incurred for turning off the water.

When pipes are out of repair, Commissioners may turn off water.

(Secs. 294-298.)

Supply for
business.

294. The Commissioners may supply water * * * [1] for purposes other than domestic purposes, and may, subject to such charges and rates as may have been fixed by the Commissioners at a meeting, lay down, or allow to be laid down, the necessary pipes and works of such dimensions and character as may be approved by them.

Householder
entitled to
certain supply
of water for
domestic use.

295. The Commissioners at a meeting may determine what quantity of water shall be supplied to the occupier of every house free of further charge for every rupee paid to the Commissioners as water-rate on account of such house.

If the Commissioners have reason to believe that the occupier of any house consumes more water than he is entitled to as aforesaid, it shall be lawful for them to provide a water-meter at their own expense, and to attach the same to the water-pipes of the said house; and any water which may be used over and above the quantity to which the occupier is entitled as aforesaid shall be paid for by him at such rate as the Commissioners at a meeting may determine.

Commis-
sioners may
provide
filtered or
unfiltered
water for
latrines.

296. It shall be at the option of the Commissioners to provide filtered or unfiltered water for all latrines and water-closets, and it shall be lawful for them to require that all latrines and water-closets supplied with water, filtered or unfiltered, shall be provided with a cistern of such size and description as the Commissioners shall direct, and all such cisterns shall be put up at the cost of the owner of the house or land so supplied with water.

Water may
be cut off on
neglect to
pay the rate.

297. If any person supplied with water shall neglect to pay the water-rate hereinbefore mentioned at the times of payment thereof, or the charge made for the said water when supplied for other than domestic purposes, the Commissioners may turn off the water from the house or land in respect of which such rate or charge is payable, and may recover the expense of turning off the water from such person:

Provided that the stopping or cutting off the supply of water shall not relieve any person from any penalties or liabilities which he may have incurred.

Occupier in
whose house
water is
wasted liable
to penalty.

298. The occupier of any house or land in which water supplied by the Commissioners under this Part is, from negligence or other circumstances under the control of the said occupier, wasted, or in whose house or land the pipes, works or fittings for the supply of water shall be found to be out of repair to such an extent as to cause waste of water, shall be liable to a fine not exceeding twenty rupees.

[1] The words "through a meter," in s. 294, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 83, and are omitted.

(Secs. 299-304.)

299. Any person otherwise causing waste of water supplied by the Commissioners shall be liable to a fine not exceeding five rupees.

Person causing waste of water liable to penalty.

300. It shall be within the discretion of the Commissioners to allow any person not residing within the limits of the municipality to take or be supplied with water for domestic use, on such terms as the Commissioners in meeting may from time to time prescribe.

Commissioners at their discretion may allow person outside the town to take water. Penalty.

And any person taking or causing to be taken for use, outside the limits of the municipality, water supplied by the Commissioners, without the permission of the Commissioners, shall be liable to a fine not exceeding fifty rupees..

301. Before a connection for the supply of water from the service-pipes of the Commissioners to any house or land is sanctioned, the Commissioners may cause all the works, pipes and fittings within the said house or land to be inspected by an officer appointed by them in that behalf.

Before connection an officer of the Commissioners to cause all works and pipes to be inspected.

And the cost of such inspection shall be payable in advance by the person applying for such connection at such rates as the Commissioners in meeting shall from time to time direct.

And, until such officer shall have certified to the Commissioners that the works, pipes and fittings have been executed and put up in a satisfactory manner, a connection with the Commissioners' service-pipes shall not be permitted.

302. The connection with the service-pipes of the Commissioners as also the laying of supply-pipes under any public road or thoroughfare, shall be executed by an officer of the Commissioners authorized in that behalf and by no other person.

Connection with service pipes to be executed only by an officer of the Commissioners.

And the expense of making such connection shall be payable in advance by the person applying for the same, at such rates as the Commissioners in meeting shall from time to time direct.

303. Any person who shall unlawfully flush, draw off, divert or take water from any water-works belonging to, or under the control of, the Commissioners, or from any water or streams by which such water-works are supplied, shall be liable to a fine not exceeding one hundred rupees.

Obstructing or diverting water.

304. No works for introducing a supply of water to any house shall be commenced by the owner without sending a specification and estimate of the cost thereof to the occupier, nor by the occupier without sending such specification and estimate to the owner.

Estimate and specification of works to be sent.

(Secs. 305-308.)

Owner to
bear the cost
of keeping
works in
repair.

305. Except in the case of a special agreement to the contrary, the owner of any house or land shall bear the expense of keeping all works connected with the supply of water to such house or land in substantial repair :

Provided that nothing in this section shall affect the liabilities of parties under leases executed previous to the extension of this Part to the municipality in which the said house or land is situated.

Tanks, etc.,
vested in the
Commis-
sioners.

306. All public tanks, reservoirs, cisterns, wells, aqueducts, conduits, tunnels, pipes, pumps and other water-works whether made, laid or erected at the cost of the Commissioners or otherwise, and all bridges, buildings, engines, works, materials and things connected therewith, or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank shall become vested in the Commissioners.

Application
of rates and
moneys
received from
the supply of
water.

307. The water-rate and all moneys collected, received or recovered for or in respect of the supply of water or the execution of works, and all fines connected therewith, or in any respect relating to the water-supply, shall be applied by the Commissioners in defraying the expense of making, extending or maintaining the water-works,[¹][in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct,] in paying the interest of money borrowed for the water-works, and in the liquidation of debts incurred in connection therewith or for some other purpose connected with the supply of water.

PART VIII.

OF LIGHTING WITH GAS.

Municipal
Commis-
sioners may
submit to
the Local
Government
a plan for
lighting.

308. In any municipality in which this Part shall have been introduced in the manner provided in section 222, it shall be lawful for the Commissioners, from time to time, to submit to the Local Government, for its sanction, a plan for lighting with gas any portion of any area situate within the municipal limits, whether so lighted already or not, such portion of the said area having been previously defined by the Commissioners at a meeting held for that purpose.

The Local Government shall cause the plan to be published for one month in the Calcutta Gazette, and the Commissioners shall publish it in the vernacular within the limits of the municipality; and after such publication, and after consideration of any objections which may be

[¹] The words in square brackets, in s. 307, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 84, in Vol. III of this Code.

(Secs. 309-312.)

raised to it or alterations suggested in it, the Local Government may, if satisfied that the lighting proposed in the plan is proper and sufficient, sanction^[1] such plan, or may refuse its sanction thereto, or may return it to the Commissioners for alteration in certain particulars to be specified by it, and when altered may sanction it as altered.

The Local Government shall cause its sanction to any plan to be notified in the Calcutta Gazette, and shall at the same time cause the plan sanctioned to be published in the said Gazette.

309. After notification by the Local Government in the last preceding section mentioned, it shall be lawful for the Commissioners to impose an annual rate^[2] not exceeding three *per centum* of their annual value upon all holdings situated within such portion of the said area for the purpose of defraying the whole expense of lighting :

Lighting-rate not exceeding three *per centum* may, after sanction of plan, be imposed on holdings. Proviso as to portions already lighted.

Provided that, as regards any portion of the said area already lighted with gas, for the future lighting of which a plan shall have been sanctioned by the Local Government under the provision of the last preceding section, if it shall appear that the estimated proceeds of the said rate at three *per centum* will not be sufficient to defray the whole expense of such lighting, it shall be lawful for the Commissioners to impose a rate sufficient to defray the whole expense of lighting such portion.

310. The rate imposed under the last preceding section upon holdings shall be paid by the occupiers thereof by quarterly instalments in advance; but no rate shall be leviable until the lamps in the portion of the area to be lighted shall have been lighted; nor shall any rate be leviable for any quarter or portion of a quarter antecedent to such lighting.

Rate payable by occupiers quarterly in advance.

311. The annual value of holdings shall be the value determined by the Commissioners for the imposition of the rate on holdings under the provisions of Part IV of this Act, or, if no such rate on holdings be imposed, the annual value shall be ascertained and determined in the manner provided in that Part. And the provisions of sections 96 to 109 (both inclusive) and 112 to 130 (both inclusive) shall, *mutatis mutandis*, and so far as they are not inconsistent with the provisions of this Part, be applicable to the assessment and collection of the lighting rate.

Valuation assessment and collection of lighting rate.

312. If any holding shall be occupied by more than one tenant holding severally, or shall be of less annual value than one hundred rupees, it shall be lawful for the Commissioners to recover the rate from the owner of such holding.

Power to assess owners in certain cases.

[¹] For a list of notifications issued under s. 308, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] As to the imposition of a lighting rate, see also s. 86, *ante*, p. 538.

(Secs. 313-316.)

Owner to
recover from
the occupier
rates paid by
owner.

313. Whenever any rate shall be recovered from any owner of any holding under the provisions of the last preceding section, it shall be lawful for such owner, if there shall be but one occupying tenant of such entire holding, to recover from such tenant the entire amount of the rate which shall have been so paid by such owner; and, if there shall be one occupying tenant of a part of such holding or more than one occupying tenant of such holding, then to recover from such tenant, or each of such tenants, such sum as shall bear to the entire amount of rate which may have been so recovered from such owner the same proportion as the value of the portion of such holding in the occupation of such tenant bears to the entire value of such holding, subject, however, to the provisions of the next succeeding sections.

Owner may
recover rate
so paid as
rent.

314. Every owner who, under the provisions of the last preceding section, may be entitled to recover any sum from any occupying tenant of any holding or of any portion thereof shall have for the recovery of such sum all such and the same remedies, powers, rights, and authorities as if such sum were rent payable to such owner by such tenant in respect of so much of such holding as may be in the occupation of such tenant.

Occupier
liable to the
rate for time
of occupation
only.

315. Every occupier shall be liable to the lighting-rate for the time of his occupation. When any person shall have been an occupier for a part only of any quarter, he shall be liable only for so much of the rate for that quarter as may be proportionate to the number of days during which he shall have been an occupier.

Excess paid
in advance to
be refunded.

If he shall have paid the rate in advance, the amount paid in excess of the sum due under this section shall be refunded.

No rate to be
charged
during
vacancy.

No such rate shall be chargeable to any person on account of any unoccupied holding for the time during which it may remain unoccupied :

Notice of
cessation of
occupancy to
be given
within seven
days.

Provided always that, when any person ceases to be the occupier of any holding upon which the rate has been assessed, he shall give the Commissioners notice to that effect within seven days from the date of the cessation of his occupancy. If the occupier fail to give such notice within such period, he shall be liable to the rate assessed on such holding for the whole quarter, although he may have occupied for a part only of such quarter; and, in cases to which the provisions of section 312 apply, the rate assessed on such holding for the whole quarter shall be recoverable from the owner, if such owner has failed to give notice that such holding is unoccupied, within seven days from the date on which it ceased to be occupied.

Unknown
owner or
occupier how

316. When the name of the owner or occupier of any holding is not known, it shall be sufficient to designate him, in any notice served or

(Secs. 317-319.)

proceeding held under this Part, as the owner or the occupier of the holding on which the rate is assessed, and without further description. to be designated.

317. If the Commissioners deem it necessary for the purposes of this Part to raise, sink or otherwise alter the situation of any gas-pipe or other gas-work laid in any portion of the said area, they may, from time to time, by notice in writing, require the person to whom any such pipe or work belongs, or under whose control it may be to cause forthwith, or as soon as conveniently may be, any such pipe or work to be raised, sunk or otherwise altered in position, in such manner as the Commissioners may direct: Situation of gas pipes or other gas-work to be altered at the expense of the Commissioners.

Provided that such alteration be not such as permanently to injure such pipe or work, or to prevent the gas from flowing as freely and conveniently as before and the expenses attending such raising, sinking, or altering, and full compensation for the damage done thereby, shall be paid by the Commissioners out of the municipal fund as well to the person to whom such pipe or work belongs as to all other persons.

318. If the person to whom any such pipe or work belongs, or under whose control it may be, do not proceed forthwith, or as soon as conveniently may be, after the receipt of such notice, to cause the same to be raised, sunk or altered in such manner as the Commissioners require, the Commissioners may themselves cause such pipe or work to be raised, sunk or altered as they may think fit: If owner, etc., neglect to make alterations, the Commissioners may cause the same to be made.

Provided that such works be not permanently injured thereby, or the gas prevented from flowing as freely and conveniently as before.

[¹]**318A.** The lighting rate and all the moneys collected, received or recovered for, or in respect of, lighting, or the execution of works, and all fines connected therewith, or in any respect relating to lighting, shall be applied by the Commissioners in defraying the expenses of making, extending or maintaining the lighting system, in the payment of such a proportionate share of the cost of collection and of general supervision as the Commissioners in meeting may from time to time direct, in paying the interest of money borrowed for lighting, and in the liquidation of debts incurred in connection therewith, or for some other purposes connected with lighting. Application of rates and moneys received for lighting.

319. The provisions of this Part shall apply, so far as may be possible, to any scheme which may be adopted by the Commissioners of any municipality under any system involving the laying of pipes or wires or other similar apparatus. Provisions applicable to other systems of lighting.

[¹] Section 318A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 85, in Vol. III of this Code.

(Secs. 320-322.)

PART IX.

OF THE CONSTRUCTION AND CLEANSING OF LATRINES.

Notice to be
issued by the
Commissioners .

320. In any municipality to which the provisions of this Part shall have been extended in the manner prescribed by section 222, the Commissioners may issue a notice declaring that, from a date to be specified in such notice, they will maintain an establishment for the cleansing of * * * ^[1] private ^[2] [privies and cesspools] within the limits of the municipality, or any part thereof; and the Commissioners shall make suitable provision accordingly.

Commis-
sioners
may levy
fees.

321. When such provision has been made, the Commissioners may levy fees, ^[3] to be fixed on such scale, with reference to the annual value of holdings ^[4] [containing dwelling-houses] ^[5] [or privies] within the limits of the municipality, or such part thereof as aforesaid, as the Commissioners at a meeting may from time to time direct;

but the fee shall not exceed three rupees *per annum* where the valuation of the holding amounts to, or is less than, twenty-five rupees;

and the fee on any one holding shall not exceed four hundred and eighty rupees:

Provided that if, on the commencement of this Act, the owners or occupiers of any holding are already under engagement to pay to the Commissioners an annual sum exceeding four hundred and eighty rupees for the cleansing of their premises, such sum, or such other sum as may from time to time be agreed upon between them and the Commissioners, may be levied from them in accordance with the provisions of this Part.

Recovery of
fees.

^[6] **322.** (1) The said fee shall be payable in quarterly instalments by the occupier for the time being of the holding or by the owner thereof if there is no occupier, or under the provisions of the next succeeding section, and shall be recoverable in the manner prescribed for the recovery of the rate on the value of holdings in this Act, and the provisions of section 110 shall be applicable.

^[1] The words "public and," in s. 320, were repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 86, and are omitted.

^[2] The words "privies and cesspools," in s. 320, were substituted for the word "latrines" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 86, in Vol. III of this Code.

^[3] As to the levy of these fees, see also s. 86, *ante*, p. 538.

^[4] The words "containing dwelling-houses," in s. 321, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 87, in Vol. III of this Code.

^[5] The words "or privies," in s. 321, were inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 15, in Vol. III of this Code.

^[6] This section was substituted for the original s. 322 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 88, in Vol. III of this Code.

(Secs. 323-326.)

(2) Every instalment of the said fee shall be deemed to be due on the first day of the quarter in respect of which such instalment is payable.

[¹](3) The net proceeds of the said fees, after deducting a proportionate share, to be fixed by the Commissioners in meeting, of the cost of the staff employed in collecting and in supervising the collection of the fees and in keeping and auditing the accounts thereof, shall be applied to the maintenance of the establishment referred to in section 320, and generally to carrying out the provisions of this Part.]

(4) A list of the said fees, and of the persons liable to pay the same, shall be published once in every year as prescribed in section 354 :

Provided that no such fees shall be levied in respect of any shop or place of business which does not contain any privies or cesspools, when a fee under this Part is levied from the occupier thereof in respect of his dwelling-house within the same municipality.

323. If any holding is occupied in severalty by more than one person, the Commissioners may levy the said fee from the owner of such holding, who may recover from each occupier such sum as shall bear to the entire amount of the fee so levied the same proportion as the value of the part of the holding in the occupation of such person bears to the entire value of such holding. In certain cases fee may be levied from owner who may recover from occupier.

324. Every owner who, under the provisions of the last preceding section, is entitled to recover any sum from the occupier of any part of a holding, shall have for the recovery of the said sum all such and the same remedies, powers, rights and authorities as if such were rent payable to him by the occupier in respect of such portion of the holding as may be in his occupation. Owner may recover fees from occupier as rent.

325. The Commissioners at their discretion may compound for any period not exceeding one year, with any occupier or owner as aforesaid of any railway premises or of any premises used as a factory, dockyard, workshop, *coolie* dépôt, school, hospital, market, court-house or other similar place, for a certain sum to be paid by such occupier or owner in lieu of such fee. Commissioners may compound with occupier or owner of certain premises for fee.

326. The Commissioners may, in lieu of the aforesaid fee, levy a rate per head, to be fixed by the said Commissioners at a meeting, on the number of persons living within or habitually resorting to any such railway premises, factory, dockyard, workshop, *coolie* dépôt, school, hospital, market, court-house or other similar place. Commissioners may levy a rate per head.

[¹] This sub-section was substituted for the original sub-section (3) by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 16, in Vol. III of this Code.

(Secs. 327-333.)

327, 328. (*Commissioners may reduce or remit fee.—Penalty.*
Rep. by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 89.

Exemption
from
prosecution
under
section 217.
Powers of
servants of
Commis-
sioners.

329. No person liable to pay a fee or rate under the provisions of this Part shall be punished with fine for neglecting or refusing to keep his privy in a proper state under section 217, clause (3).

330. All servants of the Commissioners employed for the purposes of this Part may, within such hours as may be fixed by the Commissioners, enter on any premises of which the occupier or owner is liable to pay a fee or rate as aforesaid, and do all things necessary for the performance of their duties under this Part.

Commis-
sioners may
require
nightmen to
take out
licenses.

331. The Commissioners at a meeting may make an order requiring all persons employed in the removal of sewage within the limits of the municipality, or any part thereof, to take out licenses, and to be servants of the Commissioners for the purpose of removing sewage from premises within the said limits.

The Commissioners at a meeting may grant such licenses subject to such conditions as they may think fit, and may impose fees in respect of the same.

Subject to the approval of the Local Government,[¹] the Commissioners may make rules[²] to define the duties of such persons, and from time to time may alter, add to or repeal such rules; and any breach of such rules shall subject the offender to a forfeiture of license and to a fine not exceeding twenty rupees.

Commis-
sioners may
require
latrine to be
constructed
and in default
may con-
struct
themselves.

332. If the Commissioners think that any latrine or additional or common latrine should be provided for any house or land within the limits of the municipality, the owners of such house or land shall, within fourteen days after notice given by the Commissioners, or within such longer time as the Commissioner may for special reasons allow, cause such latrine to be constructed in accordance with the requisition of such notice; and, if such latrine is not constructed to the satisfaction of the Commissioners within such period, the Commissioners may cause the same to be constructed, and the expenses thereby incurred shall be paid by the owners, and shall be recoverable as provided in section 322.

Commis-
sioners may
require list of
persons in a
holding.

333. The Commissioners may, for the purposes of this Part, by a notice in writing, require the owner or occupier of any holding to furnish, within a time to be specified in the notice, a list of the number of persons residing in, or habitually resorting to, such holding.

[¹] As to the delegation to Commissioners of Divisions of the Local Government's powers, see s. 29A, *ante*, p. 515.

[²] For rules made under s. 331, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 334-339.)

334. Whoever, being the owner or occupier of any holding, fails to furnish such list within the time specified in such notice, after being required to furnish the same by the Commissioners, shall be liable to a fine not exceeding one hundred rupees.

[¹] **334A.** The provisions of this Part shall not apply to any jail, reformatory or lunatic asylum in which an establishment is maintained for the cleansing of privies and cesspools therein. Exemption of jails, etc.

PART X.

REGULATION OF MARKETS.

335. In any municipality to which this Part shall have been extended in the manner prescribed by section 222, the Commissioners at a meeting may provide land for the purpose of being used as a municipal market, and may defray the cost of providing such land and of all expenses necessary for the establishment of such market from the municipal fund, and may take a lease of any market; Power to construct markets.

and may charge rent, tolls and fees for the right to expose goods for sale in such market and for the use of shops, stalls and standings therein.

All such rents, tolls and fees may be recovered as arrears of tax under the provisions of sections 120 to 129 (both inclusive).

336. No place shall be deemed to be a "municipal market" within the meaning of the last preceding section, and no place shall be deemed to be a market to which the following sections of this Part apply, unless at least thirty shops, stalls or standings are erected therein for the sale of goods. Definition of "municipal market" and "market."

337. The Commissioners at a meeting may order that, within such limits as they may fix, no land shall be used as a market for the sale of meat, fish, butter, *ghee*, fruits, vegetables and similar provisions, otherwise than under a license to be granted by the Commissioners. Commissioners may prohibit use of unlicensed markets.

338. When the Commissioners at a meeting shall have issued an order under the last preceding section, they may at a meeting grant a license for the use of any land as a market for the sale of provisions as aforesaid within the municipality. Power to grant licenses for markets.

339. Every license granted under this Part shall be liable to the payment of a fee not exceeding twenty-five rupees, and shall be in force Duration of license and terms on which granted.

[¹] Section 334A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 90, in Vol. III of this Code.

(Secs. 340-345.)

until the end of the year, and the Commissioners [¹][shall, as regards markets lawfully established at the time of the extension of this Part to the municipality, and in all other cases] may grant such license, year by year, on the certificate in writing under the hand of the Chairman, annually renewed, that the land is fit to be used as a market for the sale of provisions as aforesaid.

Chairman
bound to
certify fit
places.

340. The Chairman, upon the application in writing of the owner of any land, shall grant such certificate unless the land be defective for the purposes of a market in drainage, ventilation, water-supply or proper width of paths and ways.

Existing
markets.

The owners or lessees of all land used as markets for the sale of provisions as aforesaid at the time of the extension of this Part to the municipality shall be entitled to receive a license for the current year without the certificate required by section 339, but in subsequent years the license shall not be renewed without such certificate.

Licenses to be
registered.

341. Every license under this Part shall be registered in a book to be kept for that purpose by the Commissioners in their office, in which shall be stated—

- (a) the name and address of the owner of the land and market;
- (b) the name and address of the lessee thereof (if any);
- (c) the extent and boundary of the market;
- (d) the description of articles sold therein; and
- (e) the days on which the market will be held.

Transfers to
be registered.

342. Every transfer of interest in any such market shall be registered within two months after the date of transfer.

Unregistered
markets to
be deemed
unlicensed.

343. Any market the license of which, or the transfer of interest in which, shall not have been duly registered under the two last preceding sections, shall be deemed to be land used as a market without a license.

Penalty for
using
unlicensed
market.

344. Whoever, being the owner or occupier of any land, wilfully or negligently permits the same to be used as a market for the sale of meat, fish, butter, *ghee*, fruits, vegetables or similar provisions without license under section 338, shall be liable to a fine not exceeding two hundred rupees for every such offence, and to a further fine not exceeding forty rupees for each day during which the offence is continued after conviction of such offence.

Power to
close
unlicensed
places.

345. The Magistrate, on the application of the Commissioners, may order any land, in respect of which a conviction shall have been obtained under the last preceding section, to be closed as a market-place, and

[¹] The words in square brackets in s. 339 were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 91, in Vol. III of this Code.

(Secs. 346-349.)

thereupon may take order to prevent such land being so used; and every person who shall sell or expose for sale meat, fish, butter, *ghee*, fruits, vegetables or similar provisions on any land which shall have been so closed, shall be liable for every such offence, to a fine not exceeding ten rupees.

PART XI.

OF THE REGISTRATION OF BIRTHS AND DEATHS.

346. The Commissioners of any municipality, when required by the Local Government to do so, shall provide for the registration of births and deaths within the limits of the municipality in accordance with the provisions of Bengal Act 4 of 1873 (*for registering births and deaths*)[¹] or any other similar Act for the time being in force.

Registration of births and deaths.

347. The Local Government may require the Commissioners of any municipality to appoint and maintain at any burning-*ghât* and burial-ground a sub-registrar for the registration of all corpses brought to such burning-*ghât* or burial-ground for cremation or interment.

On requisition of Government, Commissioners to appoint sub-registrars at burning *ghats* and burial grounds.

348. Whenever a sub-registrar shall have been appointed for any burning-*ghât* or burial-ground under the last preceding section, information of the particulars required by section 8 of Bengal Act 4 of 1873[¹] to be known and registered may be given in respect of the death of any person whose body is brought to such burning-*ghât* or burial-ground for cremation or interment to such sub-registrar, and information so given shall be deemed to be information given to the registrar of the district as required by the said section.

Information required by Bengal Act 4 of 1870 to be given to such sub-registrar.

Section 9 of Bengal Act 4 of 1873[¹] shall be applicable to all sub-registrars appointed under this Act.

349. Whenever a death shall occur in any hospital within the limits of any municipality in respect of which the Local Government has directed that all deaths shall be registered under Bengal Act 4 of 1873,[¹] it shall be the duty of the medical officer in charge of such hospital forthwith to send a notice in writing of the occurrence of such death to the Commissioners in such form as the Local Government may prescribe; and in such case no other person shall be required to give information

Information of deaths in hospitals.

[¹] The Bengal Births and Deaths Registration Act, 1873. It is printed *ante*, p. 151.

(Secs. 349A-349B.)

of such death to a registrar under Bengal Act 4 of 1873^[1] or to a sub-registrar under this Act.

[²]PART XIA.

EXTINCTION AND PREVENTION OF FIRE.

Establish-
ment and
maintenance
of fire-
brigade.

[²]**349A.** For the prevention and extinction of fire, the Commissioners at a meeting may resolve to establish and maintain a fire-brigade and to provide any implements, machinery, or means of communicating intelligence which the Commissioners may think necessary for the efficient discharge of their duties by the brigade.

Power of fire-
brigade
and other
person for
suppression
of fires.

[²]**349B.** (1) On the occasion of a fire in a municipality, any Magistrate, any Municipal Commissioner, the Secretary to the Commissioners, any member of a fire-brigade maintained by the Commissioners, then and there directing the operations of men belonging to the brigade, and (if directed so to do by a Magistrate or by a Municipal Commissioner) any Police Officer above the rank of constable may—

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire, or for saving life or property;
- (b) close any street or passage in or near which any fire is burning;
- (c) for the purpose of extinguishing the fire, break into or through, or pull down, or use for the passage of any house or other appliance, any premises;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in the place where the fire has occurred;
- (e) call on the persons in charge of any fire-engine to render such assistance as may be possible;
- (f) generally take such measures as may appear necessary for the preservation of life or property.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) of this section in good faith.

^[1] The Bengal Births and Deaths Registration Act, 1873. It is printed *ante*, p. 151.

^[2] Part XIA (ss. 349A and 349B) was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1904), s. 92, in Vol. III of this Code.

(Secs. 350-350A.)

PART XII.

MISCELLANEOUS.

350. The Commissioners of any municipality may from time to time, at a meeting which shall have been convened expressly for the purpose, and of which due notice shall have been given, frame such by-laws^[1] as they deem fit, not being inconsistent with this Act, or with any other general or special law, for—

- [²](a) regulating traffic, and for the prevention of obstructions and encroachments, and of nuisances on or near roads;
- [³](aa) prohibiting the letting-off of fire-arms, fire-works, fire-balloons or bombs, except (i) with the permission of the Ward Committee or a municipal officer empowered by the Commissioners in this behalf, and (ii) on payment of fees at such rates as may be sanctioned by the Commissioners at a meeting;
- [⁴](b) regulating the use of, and the prevention of nuisances in regard to, public water-supply, bathing and washing-places, streams, channels, tanks and wells;
- [⁴](c) regulating the disposal of sewage, offensive matter, carcasses of animals and rubbish, and the management of privies, drains, cesspools and sewers;
- [⁴](d) regulating cremations and burials and the disposal of corpses;
- [⁴](e) preventing nuisances affecting the public health, safety or convenience; and
- [⁴](f) giving effect to the objects of this Act;

and may by such by-laws impose on offenders against the same such reasonable penalties as they think fit not exceeding the sum of fifty rupees for each offence, and in case of a continuing offence, a further penalty not exceeding twenty rupees for each day after written notice of the offence from the Commissioners.

[⁵]**350A.** The Commissioners of a municipality wholly or in part situated in a hilly tract may, at a meeting, in addition to such by-laws as they may think fit to make, make such by-laws as they deem fit, not being inconsistent with this Act, or with any other general or special law, for—

[¹] For a list of by-laws made under s. 350, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] Clause (a) and clauses (b) to (f) were substituted for the words "giving effect to the objects of this Act" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 93, in Vol. III of this Code.

[³] Clause (aa) was inserted by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 17, in Vol. III of this Code.

[⁴] See foot-note [²] on this page, *ante*.

[⁵] This s. 350A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 74, in Vol. III of this Code.

Additional
power to
make by-laws
in hill
municipal-
ities.

(Sec. 351.)

as they may make under the last preceding section, make, repeal or alter by-laws,

for regulating or prohibiting the cutting or destroying of trees or shrubs, or the making of excavations or removal of soil or quarrying, where such regulation or prohibition appears to the Commissioners to be necessary for any or all of the following purposes :—

- (a) the maintenance of a water-supply;
- (b) the preservation of the soil;
- (c) the prevention of land-slips;
- (d) the formation of ravines or torrents;
- (e) the protection of land against erosion or the deposit thereon of sand, gravel or stones.

Confirmation
of by-laws.

351. By-laws made under this Act shall not take effect unless and until they have been submitted to, and confirmed by, the Local Government; nor shall such by-laws be confirmed—

unless one month at least before the making of the application notice of the intention to apply for confirmation has been given in one or more of the local newspapers circulated within the municipality to which such by-laws relate, or, if there be no such newspapers, then in such manner as the Commissioners may direct; and

unless for one month at least before any such application a copy of the proposed by-laws has been kept at the office of the Commissioners, and has been open during office hours there as to the inspection of the inhabitants of the municipality to which such by-laws relate, without fee or reward.

The Commissioners shall, on the application of any inhabitant of the municipality, furnish him with a copy of such proposed by-laws, on payment of four annas for every hundred words contained in the copy.

* * * * *

*[1]

Local
Government
may cancel
its confirm-
ation of any
by-laws.

[²][The Local Government may cancel its confirmation of any such by-law, and thereupon the by-law shall cease to have effect.]

[¹] The paragraph of s. 351, which was repealed by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 95, is omitted.

[²] This paragraph was added to s. 351 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 95, in Vol. III of this Code.

(Secs. 351A-353.)

[¹] **351A.** (1) The Commissioners at a meeting may from time to time make, repeal or alter rules[²] as to—

Power to make rules as to business and affairs.

- (a) the time and place of their meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal;
- (d) the division of duties among the Commissioners, and the powers to be exercised by sub-committees or members to whom particular duties are assigned;
- (e) the persons by whom receipts shall be granted for money received under this Act;
- [³] (f) [the duties, appointment, leave, fining, suspension and removal of municipal officers and servants;]
- (g) and other similar matters.

(2) Rules made under this section, consistent with this Act, shall be subject to the sanction of the Local Government, and shall, if sanctioned, be published in such manner as the Local Government may direct, and shall have the force of law.

352. The Commissioners may direct any prosecution for any public nuisance, and may order proceedings to be taken for the recovery of any penalties under this Act, and for the punishment of any persons offending against the same, and may order the expenses of such prosecution or other proceedings to be paid out of the municipal fund.

Commissioners may direct prosecution for public nuisance, etc.

353. No prosecution for an offence under this Act or any by-law made in pursuance thereof shall be instituted without the order or consent of the Commissioners, and no such prosecution shall be instituted except within [⁴] [six] months next after the commission of such offence, unless the offence is continuous in its nature, in which case a prosecution may be instituted within [⁴] [six] months of the date on which the

No prosecution for an offence under this Act to be instituted without consent of Commissioners.

[¹] Section 351A was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 96, in Vol. III of this Code.

[²] For lists of rules made under s. 351A, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] This clause (f) was substituted for the former clause (f) by the Bengal Municipal (Amendment) Act, 1896 (Ben. Act 2 of 1896), s. 18, in Vol. III of this Code.

[⁴] The word "six," in s. 353, was substituted for the word "three" by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 97, in Vol. III of this Code.

(Secs. 354-357.)

commission or existence of the offence was first brought to the notice of the Chairman of the Commissioners:

Provided that the failure to take out any license under this Act shall be deemed to be a continuing offence until the expiration of the period for which such license is required to be taken out.

Publication
of by-laws,
etc.

354. Every by-law, order, notice or other document directed to be published under this Act shall be written in, or translated into, the vernacular of the district, and deposited in the office of the Commissioners, and a copy shall be posted up in a conspicuous position at such office, and in such other public places as the Commissioners may direct.

And a public proclamation shall be made throughout such municipality by beat of drum, notifying that such copy has been so posted up, and that the original is open to inspection in the office of the Commissioners.

Levy of fines.

355. Fines under this Act may be imposed by a Magistrate on any person who is convicted of the offence to which the fine attaches, and may be levied under the provisions of the Code of Criminal Procedure, 1882.^[1]

10 of 1882.

How notice,
etc., may be
served.

356. Every notice, bill, form, summons or notice of demand under this Act may be served personally on or presented to the person to whom the same is addressed;

or be left at his usual place of abode with some adult male member or servant of his family;

or, if it cannot be so served, presented or delivered, may be put on some conspicuous part of his place of abode;

or of the land, building or other thing in respect of which the notice, bill, form, summons or notice of demand is intended to be served.

Service of
notice on
owner or
occupier of
land.

357. When any notice is required to be given to the owner or to the occupier of any land, such notice, addressed to the owner or occupier, as the case may require, may be served on the occupier of such land, or otherwise in the manner in the last preceding section mentioned:

Provided that, when the owner and his place of abode are known to the Commissioners or other authorities issuing the notice, they shall, if such place of abode be within the limits of their authority, cause every notice required to be given to the owner of any land to be served on such owner, or left with some adult male member or servant of his family;

^[1] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to that Code—see s. 3 (2), thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

(Secs. 358-361.)

and if the place of abode of the owner be not within such limits, they shall send every such notice by post in a registered cover addressed to his place of abode, and such service shall be deemed to be good service of the notice.

When the name of the owner or occupier is not known, it shall be sufficient to designate him as "the owner" or "the occupier" of the land in respect of which the notice is served.

358. No assessment or rating of tax on property shall be invalid for error or defect of form, and it shall be enough in any assessment, valuation or rating for the purpose of making such tax if the property so assessed or valued is so described as to be generally known, and it shall not be necessary to name the owner or occupier thereof. Tax not invalid for want of form.

359. Every person to whom a license has been granted under this Act shall, at all reasonable times, while such license shall remain in force, if thereunto required by the authorities which granted the license or by any person authorized by them in that behalf, produce such license to the said authorities or to the person so authorized. Holder of license to produce it when required.

Whoever fails to produce his license when required to produce the same by any person authorized under this section to demand the production thereof shall be liable to a fine not exceeding one hundred rupees. Penalty.

360. All costs, expenses, fees, tolls or other moneys due under this Act to the Commissioners of any municipality may be recovered in the manner provided in sections 120 to 129 (both inclusive). Recovery of moneys due to the Commissioners.

361. If money be due under this Act in respect of any holding from the owner thereof, on account of any tax, expenses or charges recoverable under this Act, and if the owner of such holding is unknown or the ownership thereof is disputed, the Commissioners may publish twice, at an interval of three months, a notification of sale of such holding, and, after the expiry of not less than three months from the date of the last publication, unless the amount recoverable be paid, may sell such holding to the highest bidder, who shall, at the time of sale, deposit the full amount of the purchase-money. Power to sell unclaimed holdings for money due.

After deducting the amount due to the Commissioners as aforesaid, the surplus sale-proceeds (if any) shall be credited to the municipal fund, and may be paid on demand to any person who establishes his right to the satisfaction of such Commissioners or in a Court of competent jurisdiction.

Any person may pay the amount due at any time before the completion of the sale, and may recover such amount by a suit in a Court of

(Secs. 362-365.)

competent jurisdiction from any person beneficially interested in such property.

Compensation for damages.

362. The Commissioners may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

No action to be brought against the Commissioners or their officers until after one month's notice of cause of action.

363. No suit shall be brought against the Commissioners of any municipality, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Commissioners and also (if the suit is intended to be brought against any officer of the said Commissioners or any person acting under their direction) at the place of abode of the person against whom such suit is threatened to be brought, stating the cause of suit and the name and place of abode of the person who intends to bring the suit;

and, unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If the Commissioners or their officer, or any person to whom any such notice is given, shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Chaukidari *chakrān* lands.

364. Notwithstanding anything contained in section 3 of Bengal Act 6 of 1870^[1] (*an Act to provide for the appointment, dismissal and maintenance of village chaukidars*), the provisions of Part II of the said Act, relating to *chaukidari chakrān* lands, shall be applicable to all such lands which have been assigned before the commencement of the said Act for the benefit of any part of a municipality, and all duties and functions which the *panchayat* of a village or any member thereof is required to discharge under the provisions of the said Part shall be discharged, and all powers which the *panchayat* of a village or any member thereof is authorized to exercise under the said Part shall be exercised by the Commissioners of such municipality, and the proceeds of the assessment on such lands made under the said Part shall be paid into the municipal fund, and shall be available for the purposes of such fund.

Police-officer to report offences and arrest persons refusing to give name and residence.

365. All police-officers shall give immediate information to the Commissioners of the municipality of any offence committed against this Act ^[2][or any by-law made in pursuance thereof].

^[1] The Village Chaukidari Act, 1870. It is printed, *ante*, p. 109.

^[2] The words "or any by-law made in pursuance thereof," in s. 365, were inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 98, in Vol. III of this Code.

(Secs. 366-367.)

When any person, in the presence of a police-officer, commits, or is accused of committing, any such offence, and refuses, on demand of a police-officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained; and he shall, within twenty-four hours from the arrest, be forwarded to the nearest Magistrate, unless before the expiration of that time his true name and residence are ascertained, in which case he shall be released on his executing a bond for his appearance before a Magistrate, if so required.

[¹][Upon the recommendation of the Commissioners, any servant of the Commissioners in receipt of a salary of not less than ten rupees *per mensem*, when empowered in that behalf by a general or special order of the District Magistrate, may exercise the powers of a police-officer under this section.]

366. If any person employed under this Act (not being a public servant within the meaning of section 21 of the Indian Penal Code)^[2] shall accept or obtain, or agree to accept or attempt to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a reward for doing or forbearing to do any official act, or for showing or forbearing to show in the exercise of his official functions favour or disfavour to any person, or for rendering, or attempting to render, any service or disservice to any person with the Commissioners or with any public servant or with the Government in the discharge of his official duties, he shall be punished with imprisonment, either simple or rigorous, as provided in section 53 of the Indian Penal Code^[2] for a term which may extend to three years, or with a fine not exceeding five thousand rupees, or with both.

45 of 1860.

367. Nothing in this Act contained shall be construed to—

Saving
clause,

- (a) render lawful any act or omission on the part of any person which, but for this Act, would by law be deemed to be a nuisance;
- (b) exempt any person guilty of nuisance from a suit in respect thereof;
- (c) affect any enactment not hereby expressly repealed.

[¹] This paragraph was added to s. 365 by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 98, in Vol. III of this Code.

[²] Printed in the General Acts, 1834-67, Ed. 1909, p. 248.

(Schedules.)

[¹]THE FIRST SCHEDULE.

(See sections 8 and 17.)

Municipalities in which the Commissioners shall be appointed by the Local Government.

District.	Municipality.
(Entries, which are inapplicable to the Province of Bihar and Orissa are omitted.)	

Hazaribagh	Hazaribagh.
Singhbhum	Chaibassa.

(Entries inapplicable to the Province of Bihar and Orissa are omitted.)

Mozafferpur	Lalgunj
Do.	Sitamarhi.
Darbhanga	Rosera.
Champaran	Bettiah.
Bhagalpur	Colganj.
Cuttack	Jajpur.
Do.	Kendrapara.

[¹] Schedule I is referred to in ss. 8, 17 and 66. For orders issued under those sections and affecting this Schedule, see foot-notes, ante.

[¹]THE SECOND SCHEDULE.

(See sections 8 and 23.)

Municipalities in which the Chairman shall be appointed by the Local Government.

District.	Municipality.
(Entries inapplicable to the Province of Bihar and Orissa are omitted.)	

Hazaribagh	Hazaribagh.
Do.	Chatra.
Lohardagga	Ranchi.
Singhbhum	Chaibassa.
Manbhum	Purulia.
Patna	Patna.
Gaya	Gaya.

[¹] Schedule II is referred to in ss. 8, 23 and 66. For orders issued under those sections and affecting this Schedule, see foot-notes, ante, pp. 506, 512, 530.

(Schedules.)^eTHE SECOND SCHEDULE—*contd.*

District.	Municipality.
Shahabad	Sasaram.
Do.	Bhubhna.
Mozafferpur	Sitamarhi.
Darbhanga	Darbhanga.
Do.	Madhubani.
Saran	Siwan.
Champaran	Bettiah.
Cuttack	Jajpur.
Do.	Kendrapara.

THE THIRD SCHEDULE.

FORM A.—(See section 112.)

Notice to be published of the preparation of the List of Assessment on Persons.

BENGAL MUNICIPAL ACT, 1884.

(Section 112.)

MUNICIPALITY OF

Whereas an assessment list of the tax upon persons occupying holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given Ben. Act 3 of 1884. that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday, and that the several persons whose names are included in the said assessment are hereby required to pay the quarterly instalments set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the tax-collector or other officer authorized to receive payment, the first payment to be made on the first day of (), and every subsequent payment on or before the first day of (), the first day of () and the first day of () or in default thereof any arrear that may be due will be realized by distress and sale of the movable

(Schedules.)

THE THIRD SCHEDULE—*contd.*

property belonging to the defaulter or which may be found on the holding in respect of which such defaulter is assessed, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners.

FORM B.—(See section 112.)

Notice to be published of the preparation of the Valuation and Rating List of Holdings.

BENGAL MUNICIPAL ACT, 1884.

(Section 112.)

MUNICIPALITY OF

Ben. Act 3
of 1884.

Whereas a valuation and rating list of the rate on the annual value of holdings has been deposited in the office of the Commissioners as required by section 112 of the Bengal Municipal Act, 1884, notice is hereby given that the said list is open to the inspection of all persons desiring to inspect the same at the office of the said Commissioners during office hours on any day not being a close holiday; and that the several owners of the holdings included therein are hereby required to pay the quarterly instalment set opposite to their names with regularity at the office appointed by the Commissioners for the receipt of the same, or to the tax-collector or other officer authorized to receive payment, the first payment to be made on the first day of () and every subsequent payment on or before the first day of (), the first day of () and the first day of (), and in default thereof any arrear that may be due will be realized by distress and sale of the movable property belonging to the defaulter, or which may be found on the holding in respect of which the valuation is made, and by such other proceedings as are allowed by law.

Dated this day of

A. B.,

Chairman of Commissioners.

(Schedule.)

THE FOURTH SCHEDULE.

FORM A.—(See section 120.)

Notice of demand under section 120.

BENGAL MUNICIPAL ACT, 1884.

To

MUNICIPALITY OF

Take notice that the sum of Rs. , being the amount due from you as shown in the accompanying bill, is hereby demanded from you, and that if you do not within fifteen days pay the same to an officer authorized to receive payment, or into the office of the Municipal Commissioners, the amount together with costs will be levied by distress and sale of your goods and chattels, or otherwise as provided by law.

A. B.,

Chairman of Commissioners.

(The following note will be added at the foot of the above notice in those cases only in which the notice is to be addressed to a person who has not already paid one instalment of the tax at the rate at which the demand is made.)

NOTE.—If you have any objection to make against this demand, you may, instead of paying the amount which is hereby demanded, present a petition to the Commissioners praying for a review of the amount assessed (or rated). Such petition must be presented within fifteen days of the service of this notice, otherwise it will not be received. If you present such petition, no amount will be levied from you until the Commissioners shall have passed an order on your petition; but after fifteen days from such order the amount due by you, with such costs as the Commissioners may direct, will be levied unless it has been previously paid.

FORM B.—(See section 121.)

TABLE OF FEES PAYABLE UPON DISTRAINTS UNDER THIS ACT.

Sums distrained for.				Fee.	
				Rs. A.	
Under 1 rupee	.	.	.	0	4
1 and under 5 rupees	.	.	.	0	8
5 „ 10	.	.	.	1	0
10 „ 15	.	.	.	1	8
15 „ 20	.	.	.	2	0
20 „ 25	.	.	.	2	8

(Schedules.)

THE FOURTH SCHEDULE—*contd.*FORM B—*contd.*

Sums distrained for.				Fee.	
				Rs.	A.
25 and under 30	.	.	.	3	0
30 „ 35	.	.	.	3	8
35 „ 40	.	.	.	4	0
40 „ 45	.	.	.	4	8
45 „ 50	.	.	.	5	0
50 „ 60	.	.	.	6	0
60 „ 80	.	.	.	7	8
80 „ 100	.	.	.	9	0
Above 100	.	.	.	10	0

The above charge includes all expenses, including the service of notice of demand, except when peons are kept in charge of property distrained, in which case three annas must be paid daily for each man. If the amount demanded be paid or the warrant discharged before the sale is held so that no sale is necessary, one-fourth of the fees specified in the above table shall be remitted.

FORM C.—(See section 122.)

Distress Warrant.

BENGAL MUNICIPAL ACT, 1884.

(Section 122.)

To (here insert the name of the officer charged with the execution of the warrant).

Whereas _____ of _____ has not paid or shown sufficient cause for the non-payment of the sum of _____

rupees due for taxes (or rates) mentioned in the margin, although the said sum has been duly demanded in writing from the said _____,

and fifteen days have elapsed since the service of the notice of demand; This is to require you to distrain the movable property of the said _____ wherever it may be found within the municipality, except ploughs, plough-cattle, tools or implements of trade or agriculture, or any other movable property, subject to the same

(Schedules.)

THE FOURTH SCHEDULE—*contd.*FORM C—*concl'd.*

exceptions which may be found within the holding specified in the margin to the amount of the said sum of and the further sum of to defray the charges of taking, keeping and selling such property, and, if within ten days next after such distress the said sum of shall not be paid, to sell the said property, and having paid and deducted out of the proceeds of the sale the said sum of and the charges of taking, keeping and selling such property, to return the surplus (if any) on demand to the person whom you shall have found in possession of the said property, and, if no demand be made, to pay the same to the Commissioners. If distress cannot be made of sufficient property of the said , you are to certify the same to us in returning this warrant.

A. B.,

Chairman of Commissioners.

 FORM D.—(See section 122.)
Form of Inventory and Notice.

BENGAL MUNICIPAL ACT, 1884.

(Section 122.)

(State particulars of goods seized.)

Take notice that I have this day seized the property specified in the above inventory for the sum of due for the taxes (or rates) mentioned in the margin, and that unless you pay to me or into the office of the Commissioners of the said sum of and the further costs of this distraint as specified below, within ten days from the day of the date of this notice, the property will be sold.

(Signature of the officer executing
the warrant of distress.)

Costs of distraint—

Date

FORM E.—(See section 124.)

Register of distraints of property and sales held on account of arrears.
for the month of _____ in _____.

1. Name of defaulter.
2. Number on register and specification of the holding on account of which the arrear is due.
3. Amount of arrear due.
4. Amount of costs and penalty.
5. Total amount to be realized.
6. Inventory of property seized under distress.
7. Date of distress.
8. Date of sale.
9. Detail of articles sold.
10. Amount realized on each article.
11. Purchaser's name.
12. Total amount realized.
13. Amount paid into the Commissioners' office on account of the arrear due with date.
14. Amount paid into the Commissioners' office on account of costs and penalties.
15. Surplus proceeds of sale remaining after deducting the amount of arrears, costs, penalties due.
16. How the surplus was disposed of, with date of such disposal.
17. Balance of arrear still remaining unrealized, if any.
18. On what date such remaining balance was realized or written off by authority.
19. Remarks (explaining why the property seized was released without sale if not eventually sold, etc., etc.).

(See sections 86 and 131.)

TAX ON CARRIAGES AND ANIMALS.

	Per quarter.
	Rs. A.
For every 4-wheeled carriage drawn by two horses ...	4 8
For every 4-wheeled carriage drawn by one horse or a pair of ponies under 13 hands ...	3 0

(Schedules.)

THE FIFTH SCHEDULE—*contd.*

				Per quarter.
				Rs. A.
[¹]	For every 4-wheeled carriage drawn by one pony under 13 hands ...	...	...	2 8]
	For every 2-wheeled carriage ...	...	...	2 8
	For every horse ...	...	...	2 0
	For every pony under 13 hands, and for every mule and donkey ...	...	...	0 12
	For every elephant ...	...	...	6 0
	For every camel ...	...	...	2 0

Carriages the wheels of which do not exceed twenty-four inches in diameter are exempted.

THE SIXTH SCHEDULE.

(See sections 2 and 4.)

Act of the Governor General in Council.

Number and year.	Subject.	Extent of repeal.
21 of 1857 . .	To make better provision for the order and good government of the station of Howrah.	Sections 4, 5, 6, 8, 9, 16, 17, 24, 33, 34, 35, 36, 37, 39, 46.

Acts of the Lieutenant-Governor of Bengal in Council.

Number and year.	Subject.	Extent of repeal.
5 of 1873 . .	To provide for the levy of a lighting rate in Howrah.	The whole Act.
5 of 1876 . .	To amend and consolidate the law relating to municipalities.	Ditto.
6 of 1878 . .	To provide for the cleansing and construction of latrines in first class municipalities.	Ditto.

[¹] The portion printed in square brackets was inserted by the Bengal Municipal (Amendment) Act, 1894 (Ben. Act 4 of 1894), s. 99, in Vol. III of this Code.

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BENGAL ACT 1 OF 1885.

(THE BENGAL FERRIES ACT, 1885.)

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BENGAL ACT 1 OF 1885.

(THE BENGAL FERRIES ACT, 1885.)^[1]

(28th May, 1885.)

An Act to regulate Ferries in Bengal.

Whereas it is expedient to regulate ferries within the territories Preamble.
subject to the Lieutenant-Governor of Bengal;^[2] It is enacted as
follows:—

Preliminary.

1. This Act may be called the Bengal Ferries Act, 1885.

Short title.

2. It shall extend to all the territories subject to the Lieutenant-Governor of Bengal:^[2]

Extent and
commence-
ment of Act.

[And it shall come into force on such date^[3] as the Lieutenant-Governor may, by notification in the Calcutta Gazette, appoint in this behalf.]

3. Regulation 6 of 1819 and Bengal Act 1 of 1866 are hereby re- Regulation 6
pealed; but all determinations, declarations, orders and rules made, of 1819 and
engagements entered into and securities taken under such Regulation of 1866
and Act shall be deemed to be respectively made, entered into and taken repealed.
under this Act.

Ben. Act 3
of 1884.

4. Nothing in this Act contained shall apply to any ferry deemed Act not to
or declared to be a municipal ferry under the provisions of the Bengal apply to
Municipal Act, 1884.^[4] municipal
ferries.

5. In this Act, unless there be something repugnant in the subject Interpretation.
or context,—

“Commissioner” means the Commissioner of a Division:

“Commis-
sioner.”

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1885, Pt. IV, p. 39; and for Proceedings in Council, see *ibid.*, Supplement, pp. 546, 553, 657 and 678.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 2.

It is in force in the Sonthal Parganas—see Vol. IV, Pt. VI; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (2 of 1913), s. 3 (2), in Vol. I of this Code.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] The Act came into force on the 1st August, 1885—see Calcutta Gazette, 24th June 1885, Pt. I, p. 610.

^[4] As to ferries in municipalities, see ss. 148 to 156 of the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), *ante*, pp. 557 and 558.

(Secs. 6-8.)

- "Ferry." "ferry" includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying bridge, a temporary bridge, and a landing stage:
- "Notification." "notification" means a notification published in the Calcutta Gazette:
- "Private ferries." "private ferries" includes all ferries other than those declared to be public ferries, or established as such, under section 6 of this Act.

PART I.

PUBLIC FERRIES.

Power to declare, establish, define and discontinue public ferries.

6. It shall be lawful for the Lieutenant-Governor from time to time^[1] to—

- (a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;
- (b) take possession of a private ferry and declare it to be a public ferry;
- (c) establish new public ferries where, in his opinion, they are needed;
- (d) define the limits of any public ferry;
- (e) change the course of any public ferry; and
- (f) discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance shall be made by notification:

Provided that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river on which such ferry is established, such alteration may be made, by an order in writing, by the Magistrate of the district.

Control of public ferries vested in the Magistrate of the district.

7. The control of all public ferries shall be vested in the Magistrate of the district, subject to the direction of the Commissioner.

Superintendence of public ferries.

8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the district in which such ferry is situated, or in such other officer as the Lieutenant-Governor may, from time to time, either by name or by official designation, appoint.

[¹] For lists of orders made under s. 6, clauses (a) to (f), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 9-12.)

And such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat.

9. The tolls of any public ferry may, from time to time, be leased by public auction for such term as the Magistrate of the district in which such ferry is situated may, with the approval of the Commissioner, direct.

Ferry tolls may be leased by auction.

The Magistrate of the district or the officer authorized by him to conduct such auction may, for sufficient reason to be recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

The lessee of the tolls of every ferry which have been leased under this section shall execute a contract setting forth the conditions on which the tolls of such ferry are to be held, and shall give security for its due fulfilment.

Execution of contract by lessee.

10. When the tolls of a public ferry have been duly leased, the lessee and every servant of the lessee shall be deemed to be legally bound to conform to the rules made under this Act for the management and control of such ferry.

Lessee of the tolls of a public ferry and his servants bound to conform to rules.

11. On the requisition of the Magistrate of the district the person in charge of a public ferry situate in such district shall maintain at one or more places, in addition to the place at which the said public ferry is established, and within two miles therefrom, such number of subsidiary ferries as may seem to the Magistrate to be necessary for the public convenience: and all the provisions contained in this Act in regard to the management and control of public ferries shall be deemed applicable to any subsidiary ferry maintained under the requisition of the Magistrate.

Provision for the establishment of subsidiary ferry.

12. All arrears due by the lessee of the tolls of a public ferry on account of his lease;

Recovery of arrears from lessee.

any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction; and

all sums due from the lessee on the surrender of his lease under section 14,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act 7 of 1880 or any other Act^[1] at the time being in force for the recovery of public demands.

[¹] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code.

(Secs. 13-15.)

Power to
cancel lease.

13. The lease of the tolls of any public ferry shall be liable to be cancelled at once by the Magistrate of the district in which such ferry is situated, if it shall appear to such Magistrate that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from such Magistrate.

Surrender of
lease.

14. The lessee of the tolls of a public ferry may surrender his lease on the expiration of one month's notice in writing to the Magistrate of the district in which such ferry is situated of his intention to surrender such lease, and on payment of such reasonable compensation as the Magistrate may, with the approval of the Commissioner, in each case direct.

Power to
make rules
in regard to
public ferries.

15. The Magistrate of the district, with the approval of the Commissioner, may from time to time make rules^[1] consistent with this Act,—

- (a) for the management of all public ferries within such district, and for regulating the traffic at such ferries;
- (b) for regulating the time and manner at and in which the terms in which, and the person by whom, the tolls of such ferries may be leased by auction;
- (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for; and
- (d) generally, to carry out the purposes of this Act:

And, when the tolls of a ferry have been leased under section 9, such Magistrate may, from time to time, with such approval as aforesaid, make additional rules consistent with this Act,—

- (e) for collecting the rents payable for the tolls of such ferries;
- (f) for regulating the returns of traffic to be, from time to time, submitted by the lessee of such ferries;
- (g) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained, and opened for the passage of vessels and rafts through the same, and

[¹] For a list of rules made under s. 15, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt VI.

(Secs. 16-17.)

(h) in cases in which the traffic is conveyed in boats, for regulating—

the number and kinds of such boats and their dimensions and equipment;

the number of the crew to be kept by the lessee for each boat;

the maintenance of such boats in good condition;

the hours during which, and the intervals within which, the lessee shall be bound to ply; and

the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip;

and may, from time to time, with such approval as aforesaid, repeal or alter such rules.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the Calcutta Gazette in such manner as the Lieutenant-Governor^[1] directs, and shall thereupon have the force of law.

16. No person shall, except with the sanction of the Magistrate of the district, maintain a ferry to or from any point within a distance of two miles from the limits of a public ferry: Private ferry not to ply within two miles of public ferry without sanction.

Provided that, in the case of any specified public ferry, the Lieutenant-Governor may, by notification,^[1] reduce or increase the said distance of two miles to such extent as he thinks fit:

Provided also that nothing hereinbefore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such places is not less than three miles, or shall apply to boats which the Magistrate of the district expressly exempts from the operation of this section.

17. Claims for compensation for any loss sustained by any person in consequence of a private ferry being taken possession of, or a new public ferry, or subsidiary ferry, being established under section 6 or section 11, shall be inquired into by the Magistrate of the district in which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto. Claims for compensation and what amount to be awarded.

Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

[1] For a list of orders made under this proviso to s. 6, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 18-22.)

Tolls. **18.** Tolls, according to such rates as may, from time to time, be fixed by the Magistrate of the district with the approval of the Commissioner, shall be levied on all persons, animals, vehicles and other things^[1] crossing any river by a public ferry and not employed or transmitted on the public service:

Provided that the Lieutenant-Governor may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt from payment of such tolls.

Where the tolls of a ferry have been leased under section 9, any such declaration, if made after the date of the auction, shall entitle the lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Magistrate of the district under this section.

Table of tolls. **19.** The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner so directs, in English, in some conspicuous place near the ferry:

List of tolls. and shall be bound to produce, on demand, a list of the tolls signed by the Magistrate of the district or such other officer as he appoints in this behalf.

Tolls, rents, compensation and fines how to be appropriated. **20.** Except as provided by section 35, all tolls, rents and compensation received by or on behalf of the Government, and all fines levied under this Act, shall be appropriated in the first instance towards the payment of all charges incurred in carrying out the provisions of this Act, and the surplus, if any, shall be credited to such fund as the Lieutenant-Governor may from time to time direct.

Compounding for tolls. **21.** It shall be lawful for the Magistrate of the district in which a public ferry is situated, with the approval of the Commissioner, from time to time to fix rates at which any person may compound for the tolls payable for the use of such ferry.

PART II.

PRIVATE FERRIES.

Power to make rules in regard to private ferries. **22.** The Commissioner may from time to time make rules^[2] consistent with this Act, for the maintenance of order, and for the safety of passengers and property, at private ferries situated in his division.

[¹] So much of s. 18 as provides for the exemption from payment of tolls of any persons, animals, vehicles or other things which are exempted by s. 3 of the Indian Tolls (Army) Act, 1901 (2 of 1901), is repealed by s. 8 of that Act. For further exemptions from tolls, see ss. 3 and 4 of the said Act, in *General Acts, 1898-1908*, Ed. 1909, p. 508.

[²] For a list of rules made under s. 22, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 23-27.)

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the Calcutta Gazette in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

PART III.

PENALTIES AND CRIMINAL PROCEDURE.

23. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 19,

Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 19,

and every lessee who neglects to furnish any return required under section 15,

shall be punished with fine which may extend to fifty rupees.

24. Every such lessee or other person as aforesaid asking or taking more than the lawful toll, or without due cause delaying any person, animal, vehicle or other thing, shall be punished with fine which may extend to one hundred rupees.

Penalty for taking unauthorized tolls, and for causing delay.

25. Every person breaking any rule made under section 15 or section 22 shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Penalty for breach of rules made under sections 15 and 22.

26. When any lessee of the tolls of a public ferry makes default in the payment of the rent payable in respect of such tolls, or has been convicted of an offence under section 25, or, having been convicted of an offence under section 23, or, section 24, is again convicted of an offence under either of those sections, the Magistrate of the district may, * * * * *^[1], cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased.

Cancellation of lease on default or breach of rules.

27. Every person crossing by any public ferry who refuses to pay the proper toll, and every person—

Penalties on passengers offending.

[¹] The words "with the approval of the Commissioner" in s. 26 were repealed by the Bihar and Orissa Ferries (Amendment) Act, 1914 (B. and O. Act 2 of 1914), s. 2 (in Vol. III of this Code), and are omitted.

(Secs. 28-32.)

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector, or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes, or takes any animals, vehicles or other things, into any ferry boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from any such ferry-boat or bridge on being requested by such toll-collector, lessee or assistant to do so, or

who moors any boat, raft or other substance to, or in any way obstructs, any part of a public ferry,

shall be punished with fine which may extend to fifty rupees.

Penalty for
plying
within public
ferry-course
without
license.

Fines payable
to lessee.

28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section 16 shall be punished with fine which may extend to fifty rupees.

29. Where the tolls of any public ferry have been leased under the provisions hereinbefore contained, the whole or any portion of any fine realized under section 27 or section 28 may, notwithstanding anything contained in section 20, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for
rash naviga-
tion and
stacking of
timber.

30. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment herein-after mentioned.

Power to
arrest with-
out warrant.
Magistrate
may assess
damage done
by offender.

31. The police may arrest without warrant any person committing an offence against section 27 or section 30.

32. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one

(Secs. 33-35.)

under section 30 by the sale of the vessel, raft or timber causing the damage, and of anything found in or upon such vessel or raft.

The Commissioner may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

PART IV.

MISCELLANEOUS.

33. On the cancelment or surrender of a lease, the Magistrate of the district may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either retain the same permanently on payment of a fair price to the proprietor, or may retain them for such time as may be necessary, not exceeding three months, until he can make arrangements for such other boats and appliances as may be necessary, in which case the Magistrate of the district shall pay a fair sum to the owners for the use of the said boats and appliances:

Power to take possession of boats and other appliances on surrender or cancellation of lease.

Provided that, within a week of taking such possession, the Magistrate of the district shall be bound to give notice to the said lessee of his intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

34. When any boats or their equipments, or any materials or appliances suitable for setting up a ferry, are emergently required for facilitating the transport of officers or troops of Her Majesty on duty, or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct) until such transport is completed.

Similar power in cases of emergency.

35. It shall be lawful for the Lieutenant-Governor to order^[1] that any public ferry situated in any district in which a district board has been established under the provisions of the Bengal Local Self-Government Act of 1885^[2] shall be managed by such District Board; and such District Board shall have all the powers vested in the Magistrate of the district under this Act except the powers specified in sections 7, 17 and 32, and the Lieutenant-Governor may further order^[1] that all or any

Management may be vested in District Board.

Ben. Act 3
of 1885.

[1] For a list of orders made under s. 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] Printed post, p. 649.

(Sec. 36.)

part of the proceeds of such ferry, and all or any part of the fines levied, and compensation received, under this Act in respect thereof, be paid into the District Fund.^[1]

And thereupon such ferry shall be managed, and such proceeds, fines and compensation shall be paid, accordingly.

The Lieutenant-Governor may from time to time vary or annul any order made under this section.

Delegation of
powers.

36. The Lieutenant-Governor may, from time to time, delegate,^[2] under such restrictions as he thinks fit, any of the powers conferred on him by this Act to any Commissioner or Magistrate of a district, or to such other officer or authority as he thinks fit, by name or by official designation.

^[1] As to the crediting to the District Fund of receipts from public ferries, see also s. 52 (4) of the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), *post*, p. 668.

^[2] For a list of orders made under s. 36, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

BENGAL ACT 3 OF 1885.

(THE BENGAL LOCAL SELF-GOVERNMENT ACT OF 1885.)

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BENGAL ACT 3 of 1885.

(THE BENGAL LOCAL SELF-GOVERNMENT ACT 3 of 1885.)

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BENGAL ACT 3 OF 1885.

(THE BENGAL LOCAL SELF-GOVERNMENT ACT OF 1885.)^[1]

(22nd July, 1885.)

**An Act to extend the system of local self-government in
Bengal.**^[2]

Whereas it is expedient to extend the system of local self-government Preamble.
within the territories subject to the Government of the Lieutenant-
Governor of Bengal^[2]; It is enacted as follows:—

Preliminary.

1. This Act may be called the Bengal Local Self-Government Act of Short title.
1885.

It shall extend to all the territories subject to the Lieutenant- Extent.
Governor of Bengal^[2] [*which are not included within the limits of the*
town of Calcutta,] * * *^[3] or of any place or town to which the
provisions of the Bengal Municipal Act, 1884,^[4] have been, or may
hereafter be extended:

Ben. Act 3
of 1884.

And it shall come into force in any district on such date as the Commence-
Lieutenant-Governor may, by notification,^[5] direct. ment.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, *see* Calcutta Gazette, 1885, Pt. IV, p. 99; for Preliminary Report of Select Committee, *see* *ibid*, 1884, Pt. IV, p. 61; for further Report of Select Committee, *see* *ibid*, 1885, Pt. IV, p. 13; and for Proceedings in Council, *see* *ibid*, 1885, Supplement, pp. 90, 260, 365, 401 and 529; *ibid*, 1884, Supplement, pp. 262 and 560; *ibid*, 1885, Supplement, pp. 549, 658 and 683.

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal, except (*the town of Calcutta*) the district of Singhbhum, the Southal Parganas (*the Chittagong Hill tracts*) and towns in which the Bengal Municipal Act, 1884, is in force (*see* s. 1, para. 2); but it does not come into force in any district until notified (*see* *ibid*, para. 3).

The application of the Act is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

The Act has under s. 1, para. 3, been declared in force in all districts except portions of Singhbhum and the Southal Parganas.

It is consequently in force throughout the present Province of Bihar and Orissa, except—

- (1) Provincial Municipalities, *
- (2) the district of Singhbhum, and
- (3) the de-regulationed tracts, namely, the District of Angul and the Southal Parganas.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] The words “or of the districts of Singhbhum, the Southal Parganas or the Chittagong Hill-tracts,” in s. 1, were repealed, by the Bengal, Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2, and are omitted.

^[4] Printed *ante*, p. 501.

^[5] For a list of notifications issued under this paragraph of s. 1. *see* the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 2-4.)

[Any notification, order or rule, and any appointment to an office, may be made, or election held, under this Act after it shall have received the assent of the Governor General, and shall take effect in any district on this Act coming into force therein.]

2. On this Act coming into force in any district, the enactments specified in the first and second Schedules shall, as regards such district, be repealed to the extent mentioned in the third column of the first Schedule, and be amended to the extent mentioned in the third column of the second Schedule.

Enactments repealed and amended.

But this repeal shall not revive any office, authority or thing abolished by such enactment, or affect the validity of anything which has been done or suffered, or any right, title, obligation or liability which has accrued before the commencement of this Act.

Ben. Act 9 of 1880.

3. Every person holding office in any district under the repealed provisions of the Cess Act, 1880.^[1] shall continue to hold such office until it shall be abolished, or a new appointment made in respect thereof, by the District Board established in such district under the provisions of this Act:

Office held under repealed provisions of Bengal Act 9 of 1880 to continue in existence until its abolition or confirmation by District Board.

Provided that, if for a period of twelve months from the date on which this Act comes into force in any district, the District Board does not abolish such office or make such appointment as aforesaid, the person holding such office shall be deemed to have been appointed to it under the provisions of this Act:

Provided, further, that, if such office shall be abolished or a new appointment made in respect thereof, compensation, pension or gratuity shall be paid from the District Fund to any person not being a servant of the Government who may be deprived of such office, and the amount of such pension or gratuity shall be calculated in accordance with any rules made under the provisions of section 138 of the Cess Act, 1880^[1]; or if no such rules have been made, the amount shall be calculated in accordance with the rules regulating the payment of compensation, pensions and gratuities to uncovenanted servants of the Government.

Ben. Act 9 of 1880.

4. Notwithstanding anything in section 1, this Act shall not come into force in any cantonment without the sanction of the Governor General in Council, previously obtained.

Act not to come into force in cantonments without sanction of Governor General in Council.

(Secs. 5-6.)

5. In this Act, unless there be something repugnant in the subject Interpretation.
or context,—

“Commissioner” means the Commissioner of a Division : “Commissioner.”

“local authority” means any District Board or Local Board, Joint Committee, Union Committee or Joint Union Committee constituted under this Act. “Local authority.”

Ben. Act 3 of 1884. “municipal authority” means the commissioners of a municipality constituted under the provisions of the Bengal Municipal Act, 1884^[1]: “Municipal authority.”

“Notification” means a notification published in the Calcutta Gazette: “Notification.”

“Magistrate of the district” includes any Magistrate subordinate to the Magistrate of the district, to whom he may delegate all or any of his powers under this Act: “Magistrate of the district.”

the term “salaried servant of Government” does not include a retired servant of Government in receipt of a pension: “Salaried servant of Government.”

“financial year” means the year commencing on the first day of April: “Financial year.”

Ben. Act 9 of 1880. “cess year” means the year as fixed by the Lieutenant-Governor under the Cess Act of 1880.^[2] “Cess year.”
[³] “sanitation” includes water-supply. “Sanitation.”

PART I.—LOCAL AUTHORITIES.

CHAPTER I.

DISTRICT BOARDS AND LOCAL BOARDS.

Constitution of District Boards and Local Boards.

6. The Lieutenant-Governor shall, by notification, establish a District Board for every district. District Boards and Local Boards.

The Lieutenant-Governor may, by notification,^[4] establish a Local Board in any sub-division or in any two or more sub-divisions combined, and may cancel or vary any such notification:

^[1] Printed *ante*, p. 501.

^[2] Printed *ante*, p. 373.

^[3] This definition “sanitation” was added, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 3, in Vol. III of this Code.

^[4] For lists of notifications issued under para. 2 of s. 6, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 7-8.)

Provided that a Local Board shall be established in every sub-division of every district mentioned in the third Schedule of this Act * * *^[1]

A District Board shall have authority, for the purposes of this Act, over the district for which it is established, and a Local Board shall have authority over such sub-division or sub-divisions as the Lieutenant-Governor may, by notification, direct.

Constitution
of District
Boards.

7. A District Board shall consist of such number of members, not being less than nine, as the Lieutenant-Governor may, by notification,^[2] fix in this behalf, and may include elected and appointed members:

Provided that, if there be no Local Board within a district, the whole of the District Board shall consist of appointed members.

When a Local Board has been established in any district, such Local Board shall be entitled to elect such proportion of the whole of the District Board as the Lieutenant-Governor shall from time to time direct:^[3]

Provided that, when Local Boards have been established throughout the whole area of any district, not less than one-half of the whole District Board (exclusive of the Chairman, if appointed under section 22^[4] [section 23 A or section 29,] shall be elected by such Local Boards:

Provided also that no person shall be elected a member of the District Board unless he be qualified for election as a member of some Local Board in the district under the provisions of section 13 of this Act.

The appointed members (if any) shall be such persons and officials as the^[5] [Commissioner] shall from time to time, either by name or by official designation, appoint:^[6]

Provided that not more than one-half of the appointed members shall be salaried servants of the Government.

Constitution
of Local
Boards.

8. A Local Board shall consist of such number of members, not being less than six, as the Lieutenant-Governor may by notification^[7] fix in this behalf.

[1] The words "and in any other sub-division to which the provisions of the next succeeding Chapter shall have been extended" were repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2, and are omitted.

[2] For a list of notifications issued under para. 1 of s. 7, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] For a list of notifications issued under para. 2 of s. 7, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[4] The words and figures in square brackets were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 4 (1), in Vol. III of this Code.

[5] This word "Commissioner" in s. 7 was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 4 (2), in Vol. III of this Code.

[6] For a list of *ex-officio* appointments made under para. 3 of s. 7, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[7] For a list of notifications issued under s. 8, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 9-11.)

9. Two-thirds of the members of each Local Board established in a district mentioned in the third Schedule of this Act shall be elected under such rules, consistent with this Act, as the Lieutenant-Governor may make for each Local Board in respect of the qualifications required to entitle any person to vote for a candidate for election, and in respect of the time and mode of election :

Lieutenant-Governor to make rules for qualification of persons entitled to vote for election of members of Local Boards.

Provided that every male person of the full age of twenty-one years resident within the area under the authority of a Local Board who is qualified in one of the manners following, that is to say :—

- (1) is a member of a Union Committee within such area ;
 (2) has during the year immediately preceding such election—

Qualification of electors.

(a) paid a sum of not less than one rupee on account of road-cess in respect of lands situated either wholly or in part within such area ;

(b) paid license tax in respect of a trade, dealing or in industry carried on within such area ; or

(c) been possessed of a clear annual income from any source of not less than two hundred and forty rupees ;

(3) been a member of a joint undivided family, one of the members of which is qualified for election as in this section hereinbefore provided, is a graduate or licentiate of any University, or holds a certificate as a pleader or *mukhtar* ; shall be entitled to vote at an election of members of such Local Board.

[¹]10. If, within the time prescribed by rules made by the Lieutenant-Governor under this Act, the prescribed proportion of elected members of any District Board or Local Board is not duly elected, the Commissioner may appoint members to make up that proportion.

Power to appoint members of District or Local Board, if prescribed proportion not duly elected.

11. One-third of the members of each Local Board established in a district mentioned in the third Schedule of this Act shall be appointed [²] by the [³][Commissioner] immediately after the result of the election mentioned in section 9 shall have been notified to him, and such appoint-

Appointment of members of Local Boards by Commissioner to take effect on result of election.

[¹] This s. 10 was substituted for the original s. 10 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 5, in Vol. III of this Code.

[²] For a list of *ex-officio* appointments made under s. 11, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] This word "Commissioner" in s. 11, was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 4 (2), in Vol. III of this Code.

(Secs. 12-13.)

ment shall be deemed to have been made on the date on which such election takes place.

Proportion-
ate number
of members
how to be
ascertained
if the whole
number is
not evenly
divisible by
two or by
three.

12. In cases where the whole number of members is not evenly divisible by two or by three, the one-half or one-third, as the case may be, shall be ascertained by taking the number next below the whole number which is evenly divisible by two or by three as the number to be divided.

Qualification
for election
as members
of Local
Boards estab-
lished in
districts men-
tioned in
Schedule.

13. The Lieutenant-Governor shall make rules, consistent with this Act, defining the qualifications of candidates for election as members of each Local Board established in a district mentioned in the third Schedule of this Act:

Provided that every male person of the full age of twenty-one years who is qualified in one of the manners following, that is to say:—

- (1) is a member of a Union Committee within the area under the authority of such Local Board.
- (2) has, during the year immediately preceding such election, had his fixed place of abode within^[1] [the sub-division for which Local Board has been established]; and
 - (a) paid a sum of not less than five rupees on account of road-cess in respect of land situated, either wholly or in part, within the area under the authority of such Local Board;
 - (b) paid a license tax of not less than twenty rupees in respect of a trade, dealing or industry carried on within the area under the authority of such Local Board; or
 - (c) been possessed of a clear annual income from any source of not less than one thousand rupees:
- (3) being a member of a joint undivided family, one of the members of which is qualified for election under clause (1) or clause (2) (a) or (b) of this proviso, is a graduate or licentiate of any university, or holds a certificate as a pleader or *mukhtar*;

[¹] These words in square brackets in s. 13 were substituted for the words "the area under the authority of such Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 6, in Vol. III of this Code.

(Secs. 14-17.)

shall be deemed to be qualified for election as a member of such Local Board.

14. It shall be lawful for the Lieutenant-Governor, by notification^[1] from time to time, to add the name of any district to the list included in the third Schedule of this Act.

From and after the date of such notification such district shall, for the purposes of this Act, be deemed to be a district mentioned in such Schedule.

15. The members of a Local Board, established in a district not mentioned in the third Schedule of this Act, shall be appointed^[2] by the^[3] [Commissioner], either by name or by official designation:

Provided that not more than one-half of the whole number shall be salaried servants of the Government:

Provided, further, that the Lieutenant-Governor may, at any time in regard to any Local Board, direct that two-thirds of the members of such Local Board shall be elected under the provisions of sections 9, 10 and 13, and that one-third shall be appointed under the provisions of section 11.

16. (*Term of office of members of District Board and Local Board*).
Rep. by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2.

17. A member of a District Board or Local Board may resign by notifying in writing his intention to do so, in the case of a member of a District Board, to the^[4] [Commissioner], and in the case of a member of a Local Board to the^[5] [District Board], and, on such resignation being accepted by the^[4] [Commissioner] or^[5] [District Board], respectively, the member shall be deemed to have vacated his office, and shall not be re-elected until the expiration of the term for which he would have held the office but for his resignation.

[1] For a notification issued under s. 14, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] For a list of *ex-officio* appointments made under s. 15, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] This word "Commissioner" was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 4 (2), in Vol. III of this Code.

[4] This word "Commissioner" was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 7, in Vol. III of this Code.

[5] These words "District Board" were substituted for the word "Commissioner," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 7, in Vol. III of this Code.

(Secs. 18-19.)

Powers of
Commissioner
to remove
members.

18. 1 The [2][Commissioner] may remove any member of a District Board, [3][Local Board or Union Committee]—

- (a) if he refuses to act, or becomes incapable of acting, or is declared insolvent,[4] * * * * *
- (b) if he has been declared by notification to be disqualified for employment in the public service;
- (c) if he, without an excuse sufficient in the opinion of the [2][Commissioner], absents himself from six consecutive meetings of the Board;
- (d) when he is a salaried servant of the Government, if his continuance in office is, in the opinion of the [2][Commissioner], undesirable.

[5](2) Any member who is removed under sub-section (1) may appeal to the Lieutenant-Governor whose decision shall be final.

Power of
Lieutenant-
Governor to
remove
members
after
proceedings
in Criminal
Court.

[6]**18A.** The Lieutenant-Governor may remove any member of a District Board, Local Board or Union Committee who is convicted of any such offence, or is subjected by a Criminal Court to any such order, as, in the opinion of the Lieutenant-Governor, formed after due inquiry, unfits him to be a member.

Filling of
casual
vacancies.

[7]**19.** (1) When the place of an elected member of a District Board or Local Board becomes vacant by his resignation, removal or death, a new member shall be elected, in accordance with the rules made by the Lieutenant-Governor under this Act, to fill the place:

Provided that if, within the time prescribed by such rules, no new member is duly elected, the Commissioner may appoint a new member to fill the place.

[1] This portion of s. 18 was re-numbered s. 18, sub-section (1), by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 8 (1), in Vol. III of this Code.

[2] This word "Commissioner" was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 8 (2) (i), in Vol. III of this Code.

[3] These words "Local Board or Union Committee" were substituted for the words "or Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 8 (2) (ii), in Vol. III of this Code.

[4] The words "or is convicted of any such offence, or subjected by a Criminal Court to any such order, as in the opinion of the Lieutenant-Governor, formed after due inquiry, unfits him to be a 'member'" were repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 8 (2) (iii), and are omitted.

[5] This sub-section (2) was added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 8 (3), in Vol. III of this Code.

[6] Section 18A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 9, in Vol. III of this Code.

[7] These ss. 19 and 19A were substituted for the original s. 19, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 10, in Vol. III of this Code.

(Secs. 19A-22.)

(2) When the place of an appointed member of a District Board or Local Board becomes vacant as aforesaid, the Commissioner may appoint^[1] a new member to fill the place.

(3) No act of any District Board or Local Board, or of its officers, shall be deemed to be invalid by reason only of the fact that the number of members of the Board, at the time of the performance of the act, was less than the prescribed number.

[²]19A. (1) A member of a District Board or Local Board who has been appointed by official designation shall, subject to sections 17, 18 and 18A of this Act, and unless the Lieutenant-Governor otherwise directs, continue to be a member of the Board while he continues to hold the office to which such designation refers.

Term of office
of member of
District
Board
or Local
Board.

(2) A member of a District Board or Local Board who has been elected or appointed under section 19 shall, subject as aforesaid, hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office.

(3) In cases not provided for by sub-section (1) or sub-section (2) of this section, the term of office of a member of a District Board or Local Board shall be fixed by the Lieutenant-Governor by rules, which may provide for the retirement of members by rotation.

(4) An outgoing member of a District Board or Local Board may, if otherwise qualified, be re-elected or re-appointed.

20. Every District Board shall be a body corporate by the name of "the District Board of (*name of District*)," and shall have perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and, subject to any rules made by the Lieutenant-Governor under this Act, to transfer any such property held by it, and to contract and do all other things necessary for the purposes of this Act, and may sue and be sued in its corporate name.

Incorporation
of District
Boards.

21. The several District Boards and Local Boards constituted under this Act shall come into existence at such time as the Lieutenant-Governor may by notification^[3] fix in this behalf.

Time for
District
Boards and
Local Boards
coming into
existence.

Chairman and Vice-Chairman.

22. Every District Board shall be presided over by a Chairman, who shall be appointed by the Lieutenant-Governor, or, should the Lieute-

Chairman of
District
Board.

[¹] For a list of *ex-officio* appointments under s. 19 (2), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[²] See footnote [¹] on p. 656, *ante*.

[³] For a list of notifications issued under s. 21, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 23-26.)

nant-Governor in any case so direct, be elected,^[1][either by name or by virtue of his office,] by the members of such Board from among their own number, subject to his approval.

Vice-Chairman of District Board.

23. Every District Board shall from time to time elect one of its members to be Vice-Chairman.

Appointment of Chairman or Vice-Chairman of District Board on failure to elect.

^[2]23A. If any District Board fails to elect a Chairman or Vice-Chairman within the time prescribed by rules made by the Lieutenant-Governor under this Act, the Lieutenant-Governor may appoint a Chairman or Vice-Chairman, as the case may be.

24. (*Term of office of Chairman and Vice-Chairman of District Board*). Rep. by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2. That Act was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

Chairman of Local Board.

25. Every Local Board shall be presided over by a Chairman, who shall be elected^[4][either by name or by virtue of his office], by the members from among their own number, subject to approval by the^[5][Commissioner]; or the Local Board may, at a meeting attended by not less than two-thirds of its members, request the^[5][Commissioner] to appoint^[6] a Chairman.

If the Local Board fails to elect such Chairman as aforesaid within a period of one month from the time prescribed for such election by any rules made by the Lieutenant-Governor under this Act, or within such extended time as the ^[5][Commissioner] may in his discretion allow for such election the ^[5][Commissioner] shall appoint such Chairman.

^[7]* * * * *

Vice-Chairman of Local Board.

^[8]26. (1) Every Local Board shall from time to time, within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect one of its members to be Vice-Chairman.

^[1] These words in square brackets in s. 22 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 11, in Vol. III of this Code.

^[2] Section 23A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 12, in Vol. III of this Code.

^[3] For a list of officials elected *ex-officio* under s. 25, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[4] These words "either by name or by virtue of his office," in s. 25, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 13 (a), in Vol. III of this Code.

^[5] This word "Commissioner," in s. 25, was substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 13 (b), in Vol. III of this Code.

^[6] For a list of officers appointed *ex-officio* under s. 25, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[7] The last paragraph of s. 25 was repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2, and is omitted.

^[8] These ss. 26 and 26A were substituted for the original s. 26, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 14, in Vol. III of this Code.

(Secs. 26A-29.)

(2) If any Local Board fails to elect a Vice-Chairman within such period, the Commissioner may appoint a Vice-Chairman.

[¹]26A. A District Board or Local Board may grant leave of absence to their Chairman or Vice-Chairman for any period not exceeding three months in any one year.

Leave of absence to Chairman or Vice-Chairman of District or Local Board.

27. A Chairman of a District Board or Local Board may resign by notifying in writing his intention to do so [²][in the case of a Chairman of a District Board to the Lieutenant-Governor, and in the case of a Chairman of a Local Board, to the Commissioner; and, on such resignation being accepted by the Lieutenant-Governor or Commissioner, as the case may be,] shall be deemed to have vacated his office.

Resignation of Chairman and Vice-Chairman of District Board or Local Board.

A Vice-Chairman of a District Board or Local Board may resign by notifying in writing his intention to do so to the Board; and, on such resignation being accepted, shall be deemed to have vacated his office.

28. The Lieutenant-Governor may remove any Chairman of a District Board or Local Board from his office if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as, in the opinion of the Lieutenant-Governor, formed after due inquiry, unfits him to be Chairman, or, on the application of the Board, if he persistently neglects his duty as Chairman.

Removal of Chairman and Vice-Chairman of District Board or Local Board.

A District Board or Local Board may remove its Vice-Chairman from his office if he refuses to act, or becomes incapable of acting, or is declared insolvent, or is convicted of any such offence, or subjected by a Criminal Court to any such order, as, in the opinion of the Board, formed after due inquiry, unfits him to be a Vice-Chairman, or if he persistently neglects his duty as Vice-Chairman.

[³]29. (1) If a Chairman of a District Board dies, resigns, is removed, or avails himself of leave granted under section 26A, the Lieutenant-Governor may appoint a new Chairman, or may direct that, within a period prescribed by rules made by the Lieutenant-Governor

Casual vacancies in office of Chairman or of Vice-Chairman of District or Local Board.

[¹] These ss. 26 and 26A were substituted for the original s. 26, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 14, in Vol. III of this Code.

[²] These words in square brackets in s. 27 were substituted for the words "to the Lieutenant-Governor, and on such resignation being accepted," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 15, in Vol. III of this Code.

[³] These ss. 29 and 29A were substituted for the original s. 29, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 16, in Vol. III of this Code.

(Secs. 29A-30.)

under this Act, a new Chairman be elected by the members of the Board from among their own number, subject to his approval.

(2) If a Chairman of a Local Board or a Vice-Chairman of a District Board or Local Board dies, resigns, is removed or avails himself of leave granted under section 26A, the Board shall, at a special meeting held for the purpose within a period prescribed by rules made by the Lieutenant-Governor under this Act, elect from among its members Chairman or Vice-Chairman, as the case may be.

(3) If any District Board or Local Board fails to elect a new Chairman or Vice-Chairman within the prescribed period, the Lieutenant-Governor (in the case of a District Board) or the Commissioner (in the case of a Local Board) may appoint a new Chairman or Vice-Chairman, as the case may be.

Term of office
of Chairman
and Vice-
Chairman.

[¹]29A. (1) The term of office of an elected Chairman or Vice-Chairman of a District Board or Local Board, or of an appointed Vice-Chairman of a District Board or Chairman or Vice-Chairman of a Local Board, shall, subject to sections 27 and 28 of this Act, be the residue of his term of office as a member of the Board.

(2) The term of office of an appointed Chairman of a District Board shall, subject as aforesaid, be one year from the date of his appointment; but he may be re-appointed on the expiration of that term.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the term of office of a Chairman or Vice-Chairman appointed or elected to fill a casual vacancy consequent upon the grant of leave under section 26A shall expire upon the return from leave of the person whose office he was appointed or elected to fill.

(4) Every appointed Chairman of a District Board shall be deemed to be a member of the Board during his term of office.

Joint Committees.

Joint
Committees.

30. A District Board may join with any other District Board or with any Municipal^[2] or Cantonment^[3] authority, or with more than one such Board, or Municipal or Cantonment authority, in constituting out of their respective bodies a Joint Committee for any purpose in which they are jointly interested, and in delegating to any such Joint

[¹] These ss. 29 and 29A were substituted for the original s. 29, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 16, in Vol. III of this Code.

[²] As to municipal authorities, see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), ante, p. 501.

[³] As to cantonment authorities, see the Cantonments Act, 1910 (15 of 1910).

(Secs. 31-32.)

Committee any power which might be exercised by either or any of the Boards or authorities concerned, and may from time to time frame rules as to the proceedings of any such Joint Committee, and as to the conduct of correspondence relating to the purpose for which the Joint Committee is constituted.[¹]

Conduct of Business.

31. Minutes of the proceedings at each meeting of a District Board or Local Board shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the Chairman of the meeting, and shall be published in such manner as the Lieutenant-Governor may from time to time direct, and shall at all reasonable times and without charge be open to the inspection of any person resident within, or owning or holding land within, the jurisdiction of such Board.

Record and publication of proceedings.

A copy of every resolution passed by a District Board at a meeting shall, within three days from the date of the meeting, be forwarded to the Magistrate of the district for transmission to the Commissioner.

Resolutions passed by District Board or Local Board how to be treated.

A copy of every resolution passed by a Local Board at a meeting shall, within three days from the date of the meeting, be forwarded to the District Board and to the Magistrate of the district.

32. [²]Any District Board with the sanction of the Commissioner, and subject to the control of the Lieutenant-Governor[³], and any Local Board, with the sanction of the District Board and of the Commissioner and subject to the control of the Lieutenant-Governor may from time to time make rules[³] as to—

Power to make rules as to Business and affairs.

- (a) the time and place of its meetings, the business to be transacted at meetings, and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal, and the purposes for which it shall be used;
- (d) the division of duties amongst its members;

[¹] For a similar section applying to District Boards, see the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), s. 37A, *ante*, p. 518.

[²] These words in square brackets in s. 32 were substituted for the words "Every District Board and every Local Board with the sanction of the District Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 17 (a), in Vol. III of this Code.

[³] For lists of rules made under s. 32, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 33.)

- (e) the powers to be exercised by the Chairman or Vice-Chairman, or by sub-committees or members to whom particular duties are assigned;
 - (f) the persons by whom receipts shall be granted for money received under this Act;
 - (g) the duties, appointment,^[1] [leave, leave-allowance and punishment (including suspension and removal),] of the officers and servants of the Board; and
 - (h) other similar matters;
- and may, ^[2] [with the like sanction and subject to the like control,] from time to time repeal or alter such rules.

^[3] All rules made under this section, and all orders repealing or altering any such rules, shall be published in such manner as the Lieutenant-Governor^[4] may direct; and, so far as they are consistent with this Act and with any rules made by the Lieutenant-Governor hereunder, shall, upon such publication, have the force of law.

Establishments.

District Board may appoint establishments and fix salaries.

33. Every District Board, subject to the provisions hereinafter contained, may from time to time determine and appoint the establishment to be employed by it, or by any Joint Committee constituted under section 30, ^[5] [or by an Education Committee referred to in section 65B,] and may fix the salaries to be paid to such establishment:

Provided—

- (1) that no appointment, the monthly salary of which amounts to one hundred rupees or more, shall be created or abolished without the approval of the Commissioner, and that every nomination to, and dismissal from, such an appointment shall be subject to confirmation by the Commissioner;
- (2) that the aggregate salaries and allowances in any one financial year of the establishment employed by any District Board for the purpose of heading D of Part III

^[1] These words in square brackets in s. 32 were substituted for the words "leave, suspension and removal," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 17 (b), in Vol. III of this Code.

^[2] These words in square brackets in s. 32 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 17 (c), in Vol. III of this Code.

^[3] This paragraph in s. 32 was substituted for the original paragraph by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 17 (d), in Vol. III of this Code.

^[4] For lists of rules made under s. 32, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[5] These words in square brackets in s. 33 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 18, in Vol. III of this Code.

(Secs. 34-36.)

of this Act shall not, without the sanction of the Lieutenant-Governor, exceed twenty *per centum* on the total amount available for expenditure by such Board upon public works during the financial year;

- (3) that every District Board shall conform to any rules made by the Lieutenant-Governor under this Act regarding the qualifications of candidates for employment.

34. (*Rules regarding leave of absence and absentee allowances to officers.*) *Rep. by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2.*

Pensions and gratuities to be paid out of the District Fund.

[¹]**35.** A District Board may, from time to time, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor make rules[²] for pensions and gratuities to be granted and paid out of the District Fund to its establishment, and for the grant and payment therefrom of extraordinary pensions and gratuities to the families of deceased employes; and may, with the like sanction, and subject to the like control, repeal, add to, or alter such rules.

[³]**35A.** A District Board may, from time to time, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor make rules—

Provident Fund.

- (a) for the creation and management of a Provident Fund for its several establishments;
- (b) for compelling members of its establishments to make contributions to such Fund;
- (c) for supplementing such contributions by grants from the District Fund; and
- (d) for the payment of moneys out of such Provident Fund;

and may, with the like sanction and subject to the like control, repeal, add to, or alter such rules.

36. Every Union Committee may from time to time determine and appoint the establishment to be employed by it, and may fix the salaries to be paid to such establishment:

Union Committee may appoint establishment and fix salaries.

Provided that no appointment, the monthly salary of which amounts to ten rupees or more, shall be created without the consent of [⁴] [the District Board].

[¹] This s. 35 was substituted for the original s. 35, by the Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 19, in Vol. III of this Code.

[²] For a list of rules made under s. 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] Section 35A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 20, in Vol. III of this Code.

[⁴] These words "the District Board" were substituted for the words "the Local Board to which the Union Committee creating such appointment is subordinate," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 21, in Vol. III of this Code.

(Secs. 37-41A.)

CHAPTER II.

UNION COMMITTEES.

Operation of
Chapter.

37. No provision contained in this Chapter shall apply to any district, or part of a district, unless and until it has been expressly extended thereto by notification^[1] by the Lieutenant-Governor.

Formation of
Unions.

38. The Lieutenant-Governor may, by order^[2] in writing constitute any village or group of villages into a Union; and may prescribe for such Union the number of members of which the Union Committee shall consist.

Such number shall not be less than five or more than nine.

It shall be lawful for the Lieutenant-Governor from time to time to vary or annul such order.

Election of
members of
Union Com-
mittees.

39. Save as is hereinafter provided, such number shall be elected from among the residents of the Union, in accordance with rules made by the Lieutenant-Governor under this Act, and shall constitute the Union Committee of such Union.

Appointment
on failure to
elect.

40. If the electors of any Union fail to elect the full number of members prescribed for the committee of such Union, the Commissioner may appoint the remainder.

Appointment
in substitu-
tion of
election.

41. Notwithstanding anything in this Act contained, it shall be lawful for the Lieutenant-Governor to direct,^[3] by order in writing, for reasons to be stated in such order, that any Union Committee shall consist, either wholly or in part, of members appointed by the Commissioner.

Chairman of
Union
Committee.

^[4]**41A.** (1) Every Union Committee shall, from time to time, elect one of its members to be Chairman of the Committee.

(2) The election of any person to be Chairman of a Union Committee shall be subject to the approval of the District Board.

(3) If a Chairman of a Union Committee be not elected within the period prescribed in this behalf by rule made under clause (c) of section 138 of this Act, the District Board shall appoint a member of the Committee to be Chairman.

^[1] For a list of notifications issued under s. 37, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] For a list of orders made under s. 38, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[3] For a list of orders made under s. 41, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[4] Section 41A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 22, in Vol. III of this Code.

(Secs. 42-45.)

42. The term of office of the members of a Union Committee shall be two years from the date of their election or appointment, but shall include any period which may elapse between the expiration of the said two years and the date of the next subsequent election or appointment, not being an election or appointment under the next succeeding section.

Term of office of members.

At the expiration of such term such members may be re-elected or re-appointed.

43. When the place of an elected or appointed member of a Union Committee becomes vacant by the resignation or death of such member, a new member shall be elected or appointed, in the manner hereinbefore provided, and shall hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office, but may be re-elected or re-appointed:

Filling of casual vacancies.

Provided that no act of the Committee or of its officers, or of the Committee in meeting, shall be deemed to be invalid by reason only that the number of the Committee at the time of the performance of such act was less than the prescribed number.

44. Any Union Committee may from time to time, with the consent of [¹][the District Board,] join with any other Union Committee or Committees in constituting out of their respective bodies a Joint Union Committee for any purpose in which they are jointly interested, and in delegating to any such Joint Union Committee any power which might be exercised by either or any of the Union Committees; and may from time to time frame rules as to the proceedings of any such Joint Committee and as to the conduct of correspondence relating to the purpose for which the Joint Union Committee is constituted.

Joint Union Committees.

It shall be lawful for [²][the District Board] to associate not more than two of its members with any Joint Union Committee constituted under this section.

PART II.—FINANCE.

GENERAL.

45. The Lieutenant-Governor may, by notification,^[3] direct that all or any portion of the funds vested in any local body existing in

Lieutenant-Governor may direct that funds of existing local bodies shall be vested in new local authorities.

[¹] These words "the District Board" were substituted for the words "the Local Board to which it is subordinate, as hereinafter provided," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 23, in Vol. III of this Code.

[²] These words "the District Board" were substituted for the words "the Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 23, in Vol. III of this Code.

[³] For lists of notifications issued under s. 45, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 46-47.)

[¹][any district in which this Act is in force] shall be vested in any local authority constituted under this Act, immediately upon such local authority being constituted.

CHAPTER I.

District Board to fix rate of road-cess annually.

46. A District Board, on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act, shall hold a meeting for the purpose of fixing the rate at which the road-cess^[2] shall be levied in the district during the ensuing cess year:

Provided that the rate at which the road-cess is levied when this Act comes into force in such district shall not be reduced without the sanction of the Lieutenant-Governor.

Estimates, reports and statements of District Board to be submitted to Commissioner.

47. Every District Board shall submit to the Magistrate of the district, for transmission to the Commissioner, on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act,—

- (1) a statement of the requirements and an estimate of the probable expenditure of the District Board for the ensuing financial year,
- (2) a report of its proceedings,
- (3) an account of its receipts and expenditure for the past financial year, and, from time to time, such other reports and accounts as the Commissioner may require.

The Magistrate of the district, when he is not Chairman of the Board, shall, on or before the day prescribed in the rules made by the Lieutenant-Governor under this Act, signify in writing to the Board his approval or disapproval of the statement of requirements and estimate.

When he disapproves of the statement of requirements and estimate on the ground that the expenditure on salaries, works or other objects proposed therein appears to be insufficient or excessive, or that any particulars contained therein appear to be erroneous, defective or improper, he shall state the nature of his objection.

The Board shall then consider his objection, and may modify the statement of requirements and estimate, or signify in writing its reasons for adhering to such statement and estimate; and the Magistrate of the

[¹] These words in square brackets in s. 45 were substituted for the words "such district" by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[²] As to the road-cess, see the Cess Act, 1880 (Ben. Act 9 of 1890), *ante*, p. 373.

(Secs. 48-51.)

district shall thereupon forward the statement of requirements and estimate to the Commissioner.

48. The Commissioner may either approve of the estimate as it stands, or approve of it after making such alterations therein as may seem to him fit, or may cause it to be returned to the Board for such modifications as he may think necessary, and, when such modifications have been made, the estimate shall be re-submitted for ratification to the Commissioner.

Power of
Commissioner
as to
estimates.

Provided that the Commissioner shall not make, and shall not require the District Board to make, otherwise than with its own consent, any such alterations as may have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the District Board for expenditure during the financial year.

[¹] *Explanation.*—Alterations or modifications may be made or directed by the Commissioner under this section on any of the grounds mentioned in the penultimate paragraph of section 47.

49. Any estimate prepared and approved as hereinbefore provided may, with the approval of the Commissioner, be amended or revised at any time by the District Board.

Estimates
may be
amended
or revised.

50. It shall be lawful for a District Board, subject to the provisions of any law relating to the raising of loans by local authorities for the time being in force, from time to time to raise loans for the purpose of carrying out any of the provisions of this Act, and to guarantee the payment of interest on such loans, and to form a sinking fund:

District
Boards
may raise
loans and
may form a
sinking fund.

[²] Provided that no loan shall be raised for the purpose of constructing and maintaining a railway or tramway under the provisions of section 80, unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.

51. Every Local Board shall submit to the District Board annually, on or before such date as the District Board may appoint, a statement of the requirements and an estimate of the probable expenditure of the Local Board for the ensuing financial year, and shall submit, as often as the District Board may require, accounts of its receipts and expenditure.

Estimates
and audit of
accounts of
Local Boards.

The District Board may approve such estimate or may make such alterations therein as it thinks fit.

[¹] This *Explanation* was added to s. 48, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 24, in Vol. III of this Code.

[²] This proviso was added to s. 50 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 25, in Vol. III of this Code.

(Sec. 52.)

The District Board shall make arrangements, subject to the approval of the Commissioner, for the examination and audit of accounts submitted to it under this section, and may direct the publication of such accounts.

CHAPTER II.

THE DISTRICT FUND.

Constitution
of District
Fund.

52. There shall be formed for each district a fund to be called the "District Fund," and there shall be placed to the credit thereof—

- (1) the balance of the District Road Fund of the district, after payment of the expenses mentioned in section 109^[1] of the Cess Act, 1880, as amended by this Act; Ben. Act 9 of 1880.
- ^[2](1a) all sums received under any loan raised under section 50;
- (2) all sums levied within the district as fines, penalties or otherwise under this Act;
- ^3 all sums directed by notification under section 31 of the Cattle-trespass Act, 1871,^[4] to be placed to the credit of 1 of 1871 the Fund;
- (4) all receipts in respect of public ferries within or on the boundary of the district which have been placed under the management of the District Board under the provisions of the Bengal Ferries Act, 1885^[5]; Ben. Act 1 of 1885.
- (5) all receipts in respect of any schools, hospitals, dispensaries, railways, tramways or other buildings, institutions or works, which may have been constructed by, vested in or placed under the control and administration of a District Board under Part III of this Act;
- ^[6](5a) all receipts accruing within the district from under tolls or leases under Part III, heading D (I), of this Act;

^[1] Printed *ante*, p. 373.

^[2] Clause (1a) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 26 (1), in Vol. III of this Code.

^[3] This clause (3) was substituted for the original clause (3) by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 26 (2), in Vol. III of this Code.

^[4] Printed in General Acts, 1868-78, Ed. 1909, p. 159.

^[5] As to the management of public ferries by District Boards, see the Bengal Ferries Act, 1885. (Ben. Act 1 of 1885), s. 35, *ante*, p. 639.

^[6] Clause (5a) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 26 (3), in Vol. III of this Code.

(Sec. 53.)

- (6) all sums which may be allotted to the District Board from the provincial revenues by the Lieutenant-Governor for any of the purposes mentioned in Part III of this Act, or for any other purpose;
- (7) all sums contributed to the District Board by local bodies or private persons.

[¹]The balance of the District Road Fund mentioned in clause (1) of this section shall be placed to the credit of the District Fund under a separate head.

The District Fund shall be vested in the District Board, and the balance standing to the credit of the fund shall be kept in such custody as the Lieutenant-Governor from time to time directs. District Fund to be vested in Board.

53. The District Fund shall [²][subject to the provisions of section 109[³] of the Cess Act, 1880, as amended by this Act,] be applicable to the following objects, and in the following order:— Application of District Fund.

Ben. Act 9
of 1880.

Firstly.—To the payment of any sums which the District Board may be liable to pay as interest upon loans raised by it under section 50 for the purposes of this Act, and to the formation of a sinking fund, when required.

Secondly.—To the payment of any sums which the District Board may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between such district and other districts.

Thirdly.—To the payment of such percentage as the Lieutenant-Governor may from time to time direct towards the cost of audit, and towards the cost of establishments in any office of account or in any treasury:

Provided that the total amount which any District Board may be required to pay on this account shall not in any year exceed two *per centum* on the whole amount of the District Fund for such year.

Fourthly.—To the payment of the salaries of the establishments employed by the District Board for the purposes of this Act, and of any pensions and gratuities granted under

[¹] This clause was inserted, in s. 52, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 26 (4), in Vol. III of this Code.

[²] These words in square brackets in the opening clause of s. 53 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (1), in Vol. III of this Code.

[³] Printed *ante*, p. 373.

section 3 and section 35 [¹][and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 35A,] and to the payment to the Government of such percentage as the Lieutenant-Governor may from time to time direct on the salaries of such establishments in consideration of the Government undertaking to pay the leave and pension allowances of such establishments.

[²]*Fifthly*.—To the payment of—

(a) expenses incurred by the District Board in—

(i) the construction, repair and maintenance of any works which may become vested in, or be placed under the control and administration of, such Board under Part III of this Act;

(ii) the acquisition, by purchase or otherwise, of offices for the use of the District Board, or of a house and land for the residence of the District Engineer, or the acquisition of land for, and the construction of, such offices or house; and

(iii) the performance of duties imposed, and the exercise of powers conferred, by this Act;

(b) advances granted to members of the establishments of the District Board for the purpose of enabling them to acquire or construct residences for themselves;

(c) any contribution made by the District Board under Part III of this Act; and

(d) any sums assigned by the District Board to a Local Board or Union Committee under this Act.

Sixthly.—To the payment, at such rates as the Lieutenant-Governor may direct,^[3]—

[⁴](a) of travelling expenses incurred by delegates of the District Board in attending meetings convened under the

[¹] These words in square brackets in this clause *Fourthly* were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (2), in Vol. III of this Code.

[²] This clause *Fifthly* was substituted for the original clause *Fifthly*, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (3), in Vol. III of this Code.

[³] For lists of orders under clause *Sixthly*, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁴] These clauses (a) to (d) were substituted for the words “ of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee ” by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (4), in Vol. III of this Code.

55 & 56,
Vict., c. 14.

rules made by the Lieutenant-Governor in pursuance of sub-section (4) of section 1^[1] of the Indian Councils Act, 1892, for the purpose of recommending a person to be nominated as a member of the Lieutenant-Governor's Council;

[²](b) of travelling expenses incurred by members of the District Board or any Local Board in attending meetings of the District Board or Local Board or meetings of a Committee or Joint Committee; and

[²](c) in such cases, if any, as the Lieutenant-Governor may direct, of travelling expenses incurred by members of the District Board or any Local Board in performing journeys for carrying out other objects of this Act; and

[²](d) of the expenses of any of the poorer inhabitants of the district for journeys to and from any hospital established in any part of British India for the treatment of special diseases.

Seventhly.—To the payment of expenses incurred by the District Board under section 80 of this Act.

Eighthly.—To investment in any local debenture loans issued by the Government of India or by any municipal authority or local authority, for the construction of public works which may directly improve the means of communication within the district or between such district and other districts:

Provided—

(1) that, [³][except as is provided in section 99A,] no sum shall be expended from the District Fund—

in the construction of any channel for the purposes of irrigation; or

for the purposes of drainage connected with any irrigation works in charge of public officers; or

for the improvement or maintenance of any water channel on which tolls are levied, when no portion of the proceeds of such tolls is paid into the District Fund;

(2) that no part of the District Fund shall be applied to the construction, repair or maintenance of any road within

[¹] Section 1 of the Indian Councils Act, 1892, has been repealed by s. 8 (f) of the Indian Councils Act, 1909 (7 Edw. VII, c. 4).

[²] See foot-note [⁴] on p. 670, *ante*.

[³] These words in square brackets were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (5), in Vol. III of this Code.

(Secs 53A-54.)

any municipality which has been, or may hereafter be, constituted under the Bengal Municipal Act, 1884^[1] unless such road shall have been expressly excluded from the operation of the said Act under section 30 thereof.

[²](3) that the application of the balance of the District Fund mentioned in clause (1), section 52 of this Act to any object other than those referred to in section 109^[3] of the Cess Act, 1880 as amended by this Act, shall be subject to such rules as the Lieutenant-Governor may prescribe.

Temporary or accidental deviations from provisions relating to crediting or application of District Road Fund.

[⁴]53A. If any deviation from the provisions of this Act, or of any rule made hereunder, or of section 109^[3] of the Cess Act, 1880, as amended by this Act, relating to the crediting or application of the balance of the District Road Fund mentioned in clause (1) of section 52 of this Act, is shown to the satisfaction of the Lieutenant-Governor to have been of temporary duration or of an accidental character, he may cause a declaration to be made to that effect;

and such deviation shall thereupon be deemed to be valid, notwithstanding any of the provisions hereinbefore referred to.

Accounts of District Fund how to be kept and published.

54. Account-books of the District Fund shall be kept by an officer to be appointed by the District Board.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter and published in such manner as the Lieutenant-Governor directs, and any person resident in or owning or holding land in the district may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the District Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the fund remaining unspent at the end of the year, shall be prepared for each financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

Finance Committee.

55. Every District Board shall appoint a Finance Committee consisting of so many members as it thinks fit.

[¹] Printed *ante*, p. 501.

[²] Proviso (3) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27 (6), in Vol. III of this Code.

[³] Printed *ante*, p. 373.

[⁴] Section 53A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 28, in Vol. III of this Code.

(Secs. 56-57.)

It shall be the duty of such Committee to prepare the statements, *its duties*, estimates and accounts required for submission under section 47, and generally to superintend all matters connected with the finances and accounts of the District Board.

The Finance Committee shall at all times, when required so to do, produce its accounts for audit by any officer who may be appointed by the Lieutenant-Governor in that behalf.

CHAPTER III.

THE UNION FUND.

56. There shall be formed for each Union a fund to be called the Constitution of Union Fund, "Union Fund," and there shall be placed to the credit thereof—

1 of 1871.

[¹](1) all sums directed by notification under section 31[²] of the Cattle-trespass Act, 1871, to be placed to the credit of the Fund;

(2) all sums assigned thereto by the Lieutenant-Governor or District Board, whether as a contribution towards the cost of making village roads or otherwise;

(3) all other sums received by the Union Committee in the execution of this Act.

The Union Fund shall be vested in the Union Committee and the balance standing to the credit of the Fund shall be kept in such custody as the Lieutenant-Governor from time to time directs. *the Union Fund to be vested in Union Committee.*

57. The Union Fund shall be applicable to the following objects, *Application of Union Fund.* and in the following order:—

(1) to the payment of establishments employed, and expenses incurred, by the Union Committee for the purposes of this Act;

(2) to the payment of the expenses incurred by the Union Committee in respect of the duties imposed, and powers conferred, upon it under Part III of this Act, and of any expenses that may be incurred through its default in carrying out any of such duties.

[¹] This clause (1) was substituted for the original clause (1), by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 29, in Vol. III of this Code.

[²] Printed in General Acts, 1868-78, Ed. 1909, p. 168.

(Secs. 58-60.)

Accounts of
Union Fund
how to be
kept and
published.

58. Account-books of the Union Fund shall be kept by an officer to be appointed by the Union Committee.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter and published in such manner as the Lieutenant-Governor directs, and any person resident in or owning or holding land in the Union may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the Union Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the Fund remaining unspent at the end of the year, shall be prepared for each financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

Copies of the quarterly and yearly accounts shall be submitted to [¹][the District Board.]

PART III.—DUTIES AND POWERS OF LOCAL AUTHORITIES.

CHAPTER I.

DUTIES AND POWERS OF DISTRICT BOARDS.

Operation of
provisions
included
under
headings
A to E.

59. The provisions included under the headings A to [²]E (both inclusive) of this Chapter shall be in force as regards every District Board, unless and until the Lieutenant-Governor shall otherwise direct.

Operation of
provisions
included
under
headings
F to I.

60. No provision included under the headings [³]F to I (both inclusive) of this Chapter shall apply to any District Board, unless and until it has been expressly extended thereto by notification[⁴] by the Lieutenant-Governor.

[¹] These words "the District Board," in s. 58, were substituted for the words "the Local Board to which such Union Committee is subordinate," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 30, in Vol. III of this Code.

[²] This letter "E" in this s. 59, was substituted for the letter "D," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 31, in Vol. III of this Code.

[³] This letter "F" in this s. 60, was substituted for the letter "E," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 32, in Vol. III of this Code.

[⁴] For a list of notifications issued under s. 60, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 61-64.)

A.—Pounds.

Pounds.
1 of 1871.

[¹]61. Every District Board shall perform such functions as may be transferred[²] to it by notification under section 31[³] of the Cattle-trespass Act, 1871.

Powers of District Board in respect of pounds.

B.—Education.

62. Subject to any rules made by the Lieutenant-Governor under this Act, every District Board shall be charged with, and be responsible for, the maintenance and management of all primary and middle schools under public management within the district, and construction and repair of all buildings connected therewith, the appointment (subject to the provisions of section 33) of all masters and assistant masters thereof, and the payment of the salaries of such masters and assistant masters :

Primary and middle schools under public management.

Provided that nothing contained in this section shall be held to apply to schools for the education of Europeans and Eurasians.

[⁴]63. The District Board may, subject to any rules made by the Lieutenant-Governor under this Act,—

Other schools,

- (a) with its own consent, be charged with, and made responsible for, the maintenance and management of any other schools or class of schools within the district; or
- (b) make grants-in-aid of any such schools, whether the same be under public or private management.

64. It shall be lawful for the Lieutenant-Governor to declare[⁵] that the maintenance and management of any High English school under public management, situated within a town which has been or may hereafter be constituted a municipality under the Bengal Municipal Act, 1884,[⁶] shall be entrusted to a Joint Committee, consisting partly of members delegated by the Commissioners of such municipality and

High English schools.

Ben. Act 3
of 1884.

[¹] This s. 61 was substituted for the original s. 61, by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 33, in Vol. III of this Code.

[²] For a list of orders transferring functions under the Cattle-trespass Act to District Boards, see entries under Act 1 of 1871, s. 31 (a), in the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[³] Printed in General Acts, 1868-78, Ed. 1909, p. 168.

[⁴] This s. 63 was substituted for the original s. 63 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 34, in Vol. III of this Code.

[⁵] For an order made under s. 64, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁶] Printed *ante*, p. 501.

(Secs. 64A-65.)

partly of members delegated by such District Boards as may be named in the order.

Every order issued under this section shall specify the number of members to be delegated, and the proportion of the cost of maintenance of the school to be provided by each of the local authorities and the municipal authority named therein.

Every Joint Committee appointed under this section shall in respect of any such school, have the same powers and be subject to the same liabilities as are by this heading conferred and imposed on District Boards.

Provision,
maintenance
and
management
of students'
hostels.

[¹]64A. The District Board may, subject to any rules made by the Lieutenant-Governor under this Act,—

- (a) provide buildings to be used as students' hostels in connection with schools for the maintenance and management of which the Board is responsible under section 62 or section 63, and maintain and manage such hostels, or
- (b) make grants in aid of any school referred to in section 63 or section 64, or any other school, college or educational institution, for the purpose of providing buildings to be used as students' hostels in connection with such school, college or institution, or for the purpose of maintaining and managing such hostels.

Transfer of
funds by
Government
to District
Board.

65. It shall be lawful for the Lieutenant-Governor from time to time to transfer to a District Board such funds as he may deem necessary for expenditure on—

- [²](a) the improvement of any school or class of schools within the district under private management; or
- [²](b) the maintenance or improvement of any schools or class of schools maintained and managed by the District; or
- [²](c) the provision of buildings to be used as students' hostels in connection with any schools referred to in section 64, or in clause (a) or clause (b) of this section, or any other school, college or educational institution, and the maintenance and management of such hostels.

[¹] Section 64A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 35, in Vol. III of this Code.

[²] Clauses (a) to (c) in this s. 65 were substituted for the words "the improvement of primary schools within the district under private management," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 36, in Vol. III of this Code.

(Secs. 65A-66.)

And, subject to any rules made by the Lieutenant-Governor under this Act, the Board shall be charged with, and be responsible for, the proper distribution of such funds.

[¹]65A. The hostels referred to in sections 64A and 65 may be situated either within the area directly subject to the authority of the District Board or within any place or town lying within that area in which the Bengal Municipal Act, 1884,^[2] is for the time being in force.

Site of
students'
hostels.

Ben. Act 3
of 1884.

[¹]65B. (1) Every District Board shall appoint, to be members of an Education Committee,—

Constitution
and functions
of Education
Committees.

- (a) the Deputy Inspector of Schools;
- (b) three members of the District Board; and
- (c) not more than three residents of the district not being members of the District Board.

(2) The appointment of any person referred to in clause (c) of sub-section (1) to be a member of an Education Committee shall be subject to the approval of the Commissioner;

and, when his appointment has been so approved, such person shall, for the purposes of sub-clause (b) of clause *Sixthly* of section 53, be deemed to be a member of the District Board.

(3) It shall be the duty of an Education Committee, subject to the control of the District Board and to any rules made by the Lieutenant-Governor under section 138,—

- (i) to superintend all matters connected with the finances, accounts, maintenance and management of all schools maintained by the District Board, and
- (ii) to determine the conditions to be complied with when grants are made by the District Board in aid of other schools.

(4) Nothing in the foregoing sub-sections shall apply to schools referred to in section 64.

C.—Medical.

66. It shall be lawful for the Lieutenant-Governor from time to time to direct, by notification,^[3] that any public charitable dispensary or hospital within a district shall be under the control and administration of the District Board.

District
Board
to have
control and
administra-
tion of public
charitable
dispensaries

[¹] Sections 65A and 65B were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 37, in Vol. III of this Code.

[²] Printed *ante*, p. 501.

[³] For a list of notifications issued under s. 66, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 67-70.)

or hospitals
within the
district.

And the District Board shall thereupon be charged with the control and administration thereof, and the construction and repair of all buildings connected therewith.

The Lieutenant-Governor^[1] may at any time vary or annul any order made under this section.

District
Board may
establish and
maintain
dispensaries
and hospitals.

67. A District Board may provide, for the use of the inhabitants of the district, dispensaries, hospitals or temporary places for the reception of the sick, and for that purpose may—

itself build such dispensaries, hospitals or places of reception; or contract for the use of any such dispensary, hospital or place of reception, or of any part thereof; or

enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of the district, on payment of such annual or other sum as may be agreed on.

[¹] A District Board may also provide for—

(a) the training and employment of compounders, midwives and veterinary practitioners; and

(b) the promotion of free vaccination.

Two or more
District
Boards may
combine to
establish
dispensaries.

68. Two or more District Boards may, with the approval of the Commissioner or Commissioners, combine in providing a common dispensary, hospital or place for the reception of the sick, and, with the like approval, fix the proportions of the cost thereof to be borne by them respectively.

District
Board may
contribute to
cost of
maintenance
of dispensary
or hospital
outside
district.

69. A District Board may, with the approval of the Commissioner, contribute such annual or other sum as may be agreed on towards the cost of the maintenance of any dispensary or hospital which is situated outside the district, but is habitually used by the inhabitants of the district.

Power to
provide
temporary
supply of
medicine and
medical
assistance.

70. A District Board may, with the approval of the Commissioner, provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of the district.

[¹] This clause in s. 67 was added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 38, in Vol. III of this Code.

(Secs. 71-76.)

71. Every District Board, in exercising powers vested in it by the five last preceding sections, shall conform to any rules made by the Lieutenant-Governor under this Act.

District Board to conform to rules made by Lieutenant-Governor.

72. (*District Board to submit returns of births and deaths to Magistrates.*) Rep. by the Bengal Local Self-Government (Amendment) Act, 1908, s. 2.

D.—Public Works.

73. From and after the establishment of a District Board in any district, all roads, bridges, channels, buildings and other property, movable or immovable, held by, or under the control and administration of, the District Road Committee or any Branch Committee in such district for the purposes of the Cess Act, 1880,^[1] shall, for the purposes of this Act, ^[2][but subject to the provisions of Chapter III of Part III thereof] be under the control and administration of such District Board.

Ben. Act 9 of 1880.

Transfer to District Boards of roads and other property of District Road Committee.

[³]* * * * *

74. It shall be lawful for the Lieutenant-Governor from time to time to direct^[4] that any road, bridge, channel, building or other property, movable or immovable, which is vested in Government and which is situated within a district shall, with the consent of the District Board of such district, and subject to such exceptions and conditions as the Lieutenant-Governor may make and impose, be placed under the control and administration of the District Board for the purposes of this Act; and thereupon such road, bridge, channel, building or other property shall be under the control and administration of the District Board, subject to all exceptions and conditions so made and imposed and to all charges and liabilities affecting the same.

Government may place other property under District Boards.

75. Every road, building or other works constructed by a District Board from the District Fund shall be vested in the District Board by which it has been constructed.

Works constructed by District Board to be vested in it.

76. A District Board may agree with the person in whom the property in any road, bridge, tank, *ghât*, well, channel or drain is vested to take over the property therein, and after such agreement may declare,

District Board may, with consent of owners, take over and repair works.

^[1] Printed *ante*, p. 373.

^[2] These words in square brackets in this s. 73 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 39, in Vol. III of this Code.

^[3] The proviso to s. 73 was repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 2, and is omitted here.

^[4] For a list of orders made under s. 74, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 77-80.)

by notice in writing put up thereon or near thereto, that such road, bridge, tank, *ghât*, well, channel or drain has been transferred to the District Board.

Thereupon the property therein shall be vested in the District Board, and such road, bridge, tank, *ghât*, well, channel or drain shall thenceforth be repaired and maintained out of the District Fund.

District Board to submit schedules of public works.

77. Every District Board shall, at such times and in such form as the Commissioner may direct, submit a schedule of all public works subject to the control of, or vested in, such District Board.

District Board to repair and maintain works.

78. It shall be the duty of every District Board to provide for the repair and maintenance of roads, bridges, water-channels and other works for directly improving communications which have been taken charge of by the District Board under this Act, or towards which it may have agreed to contribute; and for the construction of new roads, bridges, water-channels and other means of communication.

Power to turn, divert, discontinue or close road.

[¹]**78A.** The District Board may, with the sanction of the Commissioner, turn, divert, discontinue or permanently close any road which is under the control and administration of, or is vested in, the District Board.

Miscellaneous improvements.

79. It shall be lawful for a District Board to take measures for, or to contribute towards—

the construction, repair and maintenance of any works which may directly improve the means of communication within the district or between the district and other districts;

the planting of trees by the roadside; and

the construction and maintenance of any means and appliances for improving the supply of drinking-water, or for providing or improving drainage.

District Board may construct and maintain railways or tramways.

80. It shall be lawful for a District Board, with the sanction of the Lieutenant-Governor, either singly or in combination with any municipal authority or any other local authority, to construct and maintain within, or partly within and partly without, its own district, a railway or tramway under the provisions of any law[²] for governing the construction of railways or tramways for the time being in force in Bengal, and to do all lawful acts which may be necessary in that behalf.

[¹] Section 78A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 40, in Vol. III of this Code.

[²] As to railways, see the Indian Railways Act, 1890 (9 of 1890), in General Acts, 1887-97, Ed. 1909, p. 232. As to tramways, see the Bengal Tramways Act, 1883 (Ben. Act 3 of 1883), *ante*, p. 473.

(Secs. 81-86.)

81. It shall be lawful for a District Board, with the sanction of the Lieutenant-Governor, to subscribe to any debenture loan raised by the Government of India or by any municipal authority or local authority for the construction or maintenance of any railway or tramway which, in the opinion of such District Board, is likely to be of direct benefit to the district.

District Board may subscribe to debenture loan to construct and maintain railways or tramways.

82. It shall be lawful for the District Board, with the sanction of the [¹][Governor General in Council,] from time to time to guarantee the payment from the District Fund of such sums as it shall think fit as interest on capital expended on any railways, tramways, or other works which may directly improve the means of communication within the district or between the district and other districts:

District Board may guarantee interest on capital expended on works of communication.

[²][Provided that no application for the said sanction shall be made in the case of a railway or tramway, unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.]

83. It shall be lawful for a District Board from time to time to undertake, on behalf of the Government, and upon such conditions as may be agreed upon, the construction, repair and maintenance of any public building or other work which is the property of the Government:

District Board may undertake construction, repair and maintenance of Government buildings.

Provided that the cost of such construction, repair or maintenance shall be defrayed by the Government.

84. Subject to the provisions of section 33 and to any rules made by the Lieutenant-Governor under this Act, every District Board shall appoint a properly qualified person to be its engineer, and such and so many subordinate officers under his orders as it may think necessary.

District Board to appoint engineer and his subordinates.

85. It shall be the duty of the District Engineer to prepare all plans, designs, specifications and estimates which the District Board may require, to carry out such works as it may direct, and to conform generally to all rules that may be made by the District Board under section 32 or by the Lieutenant-Governor under section 138.

Duties of District Engineer.

86. The powers of the District Board under sections 78 and 79 shall be subject to any rules made by the Lieutenant-Governor under this

Powers of Boards under sections 78 and 79 to be subject to rules for approval of plans.

[¹] These words "Governor General in Council," in s. 82, were substituted for the words "Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 41 (i), in Vol. III of this Code.

[²] This proviso was added to s. 82 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 41 (2), in Vol. III of this Code.

(Sec. 86A.)

Act regarding the submission for approval of plans, designs, specifications and estimates;

[¹][and the power of the District Board to make any contribution under section 79 shall be subject to any rules, made by the Lieutenant-Governor under this Act prescribing conditions precedent to the making of such contribution.]

[²]D (1).—*Tolls on Bridges.*

[²]86A. The District Board, with the sanction of the Lieutenant-Governor, may establish a toll-bar—

- (i) on any bridge in the district which has, after the date [³] of the commencement of the Bengal Local Self-Government (Amendment) Act, 1908, [⁴] been constructed or purchased out of the District Fund, or to the cost of the construction or purchase of which contribution has, after the said date, been made out of the District Fund; or
- (ii) on any road-way or foot-way of a railway-bridge which has, after the said date, at the instance of the District Board and out of the District Fund, been so constructed or widened as to allow the passage of persons, vehicles or animals; or
- (iii) at any place in the district, adjacent to any bridge referred to in clause (i) or clause (ii), at which tolls may conveniently be levied;

and may levy tolls at such toll-bar on persons, vehicles and animals passing over such bridge, road-way or foot-way:

Provided as follows—

- (I) no toll-bar shall be established, or tolls levied, otherwise than for the purpose of recovering—
 - (a) the expenses incurred by the District Board in constructing, purchasing, contributing to or widening such bridge, road-way or foot-way,
 - (b) the expenses incurred by the District Board in paying compensation to the owner of any private ferry for the partial or complete loss of income from such ferry,

[¹] This clause was added to s. 86 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 42, in Vol. III of this Code.

[²] This heading and ss. 86A to 86M were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 43, in Vol. III of this Code.

[³] The 28th October, 1908.

[⁴] Printed in Vol. III of this Code.

Power of District Board to establish toll-bars and levy tolls.

Ben. Act 5 of 1908.

(Secs. 86B.-86D.)

and in recouping itself for the partial or complete loss of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results in either case from the construction of such bridge, or the construction or widening of such road-way or foot-way,

- (c) interest on such expenses, at the rate of four *per centum per annum*, and
 - (d) the capitalized value of the estimated cost to the District Board of maintaining such bridge, road-way or foot-way, and of renewing it, if it requires periodical renewal;
- (2) no toll-bar shall be established, or tolls levied, on or in respect of any bridge, road-way or foot-way, the cost or estimated cost of which, as indicated in clauses (a), (b) and (d) of proviso (1), was or is less than ten thousand rupees.

[¹]86B. The District Board may grant a lease, for any period not exceeding three years, of any toll-bar established under section 86A of this Act. Lease of toll-bar.

[¹]86C. When the District Boards of two adjacent districts, having jointly constructed, purchased or contributed towards the cost of the construction or widening of a bridge, roadway or foot-way, have received sanction under section 86A of this Act to the establishment of a toll-bar, the tolls shall be levied or granted in lease by such District Board as the Lieutenant-Governor may, in his order according sanction, direct; and the proceeds of such tolls, or of the lease thereof, shall be adjusted between the two District Boards according to rules made in this behalf by the Lieutenant-Governor. Procedure where two District Boards have contributed towards cost of bridge, etc.

[¹]86D. (1) The following persons and things shall be exempted from payment of tolls at any toll-bar established under section 86A of this Act, namely:— Exemptions.

- (a) Government stores and persons in charge thereof;
- (b) police-officers and other public officers travelling on duty, District Board officers so travelling, persons in the custody of any of the officers aforesaid, property belonging to or in the custody of any of the officers aforesaid, and vehicles and animals employed by any of the officers aforesaid for the transport of such persons or property;

[¹] Sections 86B to 86D are new,—see footnote [²] on p. 682, *ante*.

(Secs. 86E.-86K.)

- (c) conservancy carts and other vehicles and animals belonging to the District Board, and persons in charge thereof; and
- (d) any other class of persons or things which may be exempted by order of the District Board.

(2) In granting a lease of any toll-bar, the District Board may stipulate that any servants and property of the District Board and any other persons and things shall be exempted from payment of tolls thereat.

Rates of
tolls.

[¹]86E. (1) When it has been determined that tolls shall be levied at any toll-bar established under section 86A of this Act, the District Board shall make and publish an order specifying the rates at which the tolls shall be levied.

(2) Such rates shall be subject to the sanction of the Commissioner and may from time to time be varied with the like sanction.

Table of tolls
to be hung
up.

[¹]86F. (1) A table of such tolls, legibly printed or written in the vernacular of the district, shall be hung up in some conspicuous position near every such toll-bar, so as to be easily readable by all persons required to pay the tolls.

(2) In default of compliance with sub-section (1) of this section, the toll-collector, or the lessee of the toll-bar, as the case may be, shall be liable to fine which may extend to fifty rupees, and to a further fine which may extend to ten rupees for each day after the first during which the default continues.

Power to
compound
for tolls.

[¹]86G. The District Board, or the lessee of any toll-bar may compound with any person for a certain sum to be paid by such person for himself, or for any vehicles or animals kept by him, in lieu of the rates specified under section 86E of this Act.

Power of toll
collector or
lessee in case
of refusal to
pay toll.
Penalty for
refusing to
pay toll.

[¹]86H. Any toll-collector or lessee of a toll-bar established under section 86A of this Act may refuse to allow any person to pass through the toll-bar until the proper toll has been paid.

[¹]86J. Whoever, having rendered himself liable to the payment of toll, refuses to pay the toll, shall be liable to fine which may extend to fifty rupees.

Police officers
to assist.

[¹]86K. If resistance is offered to any person authorized under this Chapter to collect tolls, any police-officer whom he may call to his aid shall be bound to assist him; and such police-officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

[¹] Sections 86E to 86K are new,—see footnote [²] on p. 682, *ante*.

(Secs. 86L-87.)

[¹] **86L.** If any person authorized under this Chapter to collect tolls demands or takes any higher tolls than the tolls authorized under this Chapter, he shall be liable to fine which may extend to fifty rupees, and in default of payment, to imprisonment for a term which may extend to one month. Penalty for taking unauthorised tolls.

[¹] **86M.** (1) When a toll-bar has been established and tolls have been levied, under section 86A of this Act, in respect of any bridge, roadway or foot-way, the District Board shall, at the end of each financial year, publish, by causing to be posted up at their office, an abstract account showing— District Board to publish expenses, etc., of toll bars.

- (a) the amount of the expenses incurred by the District Board in constructing, purchasing, contributing to or widening the bridge, road-way or foot-way;
- (b) the amount of the expenses incurred by the District Board in paying compensation to the owner of any private ferry for the partial or complete loss of income from such ferry, and in recouping itself for the partial or complete loss of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results in either case from the construction of such bridge, or the construction or widening of such road-way or foot-way;
- (c) the amount of interest which has accrued due on such expenses;
- (d) the capitalized value of the estimated cost to the District Board of maintaining the bridge, road-way or foot-way, and of renewing it, if it requires periodical renewal; and
- (e) the amount which has been received from the profits of the said toll-bar since its establishment.

(2) As soon as such expenses, interest and capitalized value have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied in respect of such bridge, road-way or foot-way.

E.—Sanitation.

87. It shall be the duty of every District Board, subject to any rules made by the Lieutenant-Governor under this Act, to provide, so far as may be possible, for the proper sanitation of its district, and to incur such expenses or undertake such liabilities as may be necessary in that behalf. District Board to provide for sanitation.

[¹] Sections 86L and 86M are new,—see footnote [²] on p. 682, *ante*.

(Secs. 88-90.)

General powers for supplying district with water.

88. A District Board may, with the approval of, and subject to such limits of cost as shall be imposed by, the Commissioner, provide any place within its district with a proper and sufficient supply of water, and for this purpose may—

- (1) construct, repair and maintain water-works, wells or tanks, and do any other necessary acts;
- (2) take on lease or hire any water-works and purchase any water-works, or any water, or right to take or convey water, either within or without its district; and
- (3) contract with any person for a supply of water.

Power to contribute towards cost of municipal water-supply or prevention of plague.

[¹]**88A.** A District Board may, with the sanction of the Lieutenant-Governor, contribute such annual or other sum as may be agreed upon towards the cost of—

- (a) the construction, repair and maintenance, under the provisions of the Bengal Municipal Act, 1884,^[2] of water-works, wells or tanks within the district, or
- (b) taking measures under the said Act for the prevention of plague in the district:

Ben. Act 3 of 1884.

Provided that no application for such sanction shall be made unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the total number of members of the District Board have voted.

Public streams, channels, water-courses, tanks, reservoirs, springs and wells to be under control of District Board.

89. All streams, channels, water-courses, tanks, reservoirs, springs and wells situated within the district, and not being private property or under the control of any officer of the Government, shall, for the purposes of this Act, be under the control and administration of the District Board.

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District Board may set apart tanks, parts of rivers, streams or channels for drinking and culinary purposes.

90. The District Board may, by an order duly published at such places and in such manner as it may deem fit, set apart convenient tanks, parts of rivers, streams or channels situated within the district, and not being private property or under the control of any officer of the Government, for the supply of water for drinking and for culinary purposes; and, from the date of publication of such order, such tanks, parts

[¹] Section 88A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 44, in Vol. III of this Code.

[²] Printed *ante*, p. 501.

(Secs. 91-94.)

of rivers, streams or channels shall be held to be public springs or reservoirs.

[¹]91. (1) Every District Board shall appoint, to be members of a Sanitation Committee, not more than five nor less than three members of the Board.

Constitution and functions of Sanitation Committees, and appointment of Sanitary Inspector.

(2) The Civil Surgeon of the district shall be a member *ex-officio* of the Sanitation Committee of his district.

(3) It shall be the duty of a Sanitation Committee, subject to the control of the District Board and to any rules made by the Lieutenant-Governor under section 138, to initiate and supervise works connected with the sanitation of the district, and to exercise such of the powers of the District Board as may be delegated to it in accordance with such rules.

(4) The District Board shall also appoint a properly qualified person to be its Sanitary Inspector, and, subject to the provisions of section 33, fix the salary of such Sanitary Inspector and the details of the establishment subordinate to him.

(5) The Lieutenant-Governor may, for reasons which may to him appear to be sufficient, exempt any District Board, wholly or partially, from the operation of this section.

F.—Vaccination.

92. Every District Board shall, within its district, be charged with the appointment, payment, management and supervision of all public vaccinators.

District Board to have supervision of vaccinators within their districts.

93. Every District Board shall appoint a properly qualified person to be Inspector of Vaccination within its district, and shall, subject to the provisions of section 33, fix the salary to be paid to such person.

District Board to appoint Inspectors of Vaccination.

Every Inspector of Vaccination appointed under this section shall, within the district, exercise the powers and perform the duties assigned to the Superintendent of Vaccination under the Bengal Vaccination Act, 1880.^[2]

* Ben. Act 5 of 1880.

Ben. Act 5 of 1880.

94. In every district to which the Bengal Vaccination Act, 1880^[2] has been, or may hereafter be extended, the District Board shall have

District Board to have powers of Magistrate in district to which

[¹] This s. 91 was substituted for the original s. 91 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 45, in Vol. III of this Code.

[²] Printed *ante*, p. 315.

(Secs. 95-99.)

the Vaccination Act extends. the powers of the Magistrate of the district under section 25 of the said Act.

Commissioner to make rules for guidance of District Boards.

95. The Commissioner may, with the sanction of the Lieutenant-Governor, make rules consistent with this Act, and with the Bengal Vaccination Act, 1880,^[1] for the guidance of every District Board in the exercise of the powers conferred under the three last preceding sections, and may from time to time, with the like sanction, repeal or alter such rules.

Ben. Act 5 of 1880.

Act to be read with the Bengal Vaccination Act.

96. The four last preceding sections, so far as is consistent with the tenor thereof, shall be read with, and form a part of, the Bengal Vaccination Act, 1880.^[1]

Ben. Act 5 of 1880.

G.—Census.

Commissioner may direct District Board to take a census.

97. It shall be lawful for the Commissioner, with the sanction of the Lieutenant-Governor, at any time to require a District Board to make an account of the number of persons who, at the time of taking such account, shall be within the district of such District Board:

Provided that no part of the cost incurred in taking such account shall be charged upon, or be defrayed out of, the District Fund.

Powers for taking census.

98. Every District Board which shall be required to take an account under the last preceding section shall, in taking such account, conform to any rules made by the Lieutenant-Governor under this Act, and to the provisions of any Act for the time being in force for regulating the taking of a census.

H.—Famine^[2] and Distress.

District Board may take relief measures in case of famine or serious distress.

99. It shall be lawful for a District Board, subject to such limit or expenditure as may be prescribed by the Commissioner, to take such measures as it thinks fit for the relief of famine^[3] [or serious distress] within its district, and for that purpose to—

- (1) open and maintain such relief works as may be necessary;
- (2) open and maintain such temporary hospitals, poor-houses, orphanages and places for the gratuitous distribution of food as may be necessary;

^[1] Printed *ante*, p. 315.

^[2] These words "and Distress," in this heading over s. 99, were substituted for the word "Relief," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 46 (1), in Vol. III of this Code.

^[3] These words "or serious distress," in s. 99, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 46 (2), in Vol. III of this Code. That Act was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

(Secs. 99A.-100.)

(3) employ such extra medical or other assistance as may be necessary;

[¹](4) distribute such gratuitous relief, in the form of doles of money or food, as may be necessary.

[²]**99A.** It shall be lawful for a District Board, with the sanction of the Commissioner, to incur expenditure on any local irrigation work which may appear to it to be necessary for the purpose of preventing, or mitigating the effects of, famine or scarcity within its district: Irrigation works for relief of famine or scarcity.

Provided that no such expenditure shall be incurred unless such irrigation work has been sanctioned by the Lieutenant-Governor as a relief work in accordance with rules made under this Act.

I.—Miscellaneous.

100. It shall be lawful for a District Board, with the approval of the Commissioner, and [³][subject to such rules and restrictions as the Lieutenant-Governor may from time to time prescribe] under this Act, Miscellaneous powers of District Board.
to—

(1) establish and maintain, at such places within its district as it thinks fit, staging bungalows and *sarais* for the use of travellers, and charge such fees for the use of such bungalows and *sarais* as it thinks fit: Staging bungalows and *sarais*.

Provided that such fees shall in no case exceed the amount prescribed by the Commissioner;

(2) offer rewards, upon such scale as may be approved by the Commissioner, for the destruction of noxious animals within the district; Rewards for destruction of noxious animals.

(3) hold, within [⁴][the] district, from time to time, fairs and exhibitions of cattle, country produce and agricultural implements, or local manufactures, and incur such expenditure and charge such fees in connection therewith as may from time to time be approved by the Commissioner; Fairs and exhibitions

[¹] This clause (4) was added to s. 99 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 46 (3), in Vol. III of this Code. That Act was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

[²] Section 99A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 47, in Vol. III of this Code. That Act was extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act 1 of 1914), s. 3, Sch. I.

[³] These words in square brackets in s. 100 were substituted for the words "subject to any rules made by the Lieutenant-Governor," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 48 (1), in Vol. III of this Code.

[⁴] This word "the," in s. 100 (3), was substituted for the word "its," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 48 (2), in Vol. III of this Code.

(Secs. 101-103.)

Veterinary dispensaries.	[¹](3a) establish and maintain veterinary dispensaries for the reception and treatment of horses, cattle and other animals, and charge such fees for the use of dispensaries as may from time to time be approved by the Commissioner;
Treatment of diseases of animals.	[¹](3b) appoint and pay qualified persons to prevent and treat disease of horses, cattle and other animals;
Breeding of animals.	[¹](3c) provide for the improvement of the breed of horses, cattle and asses, and for the breeding of mules;
Grants-in-aid of agricultural and veterinary improvements.	[¹](3d) make grants-in-aid of measures for improving agriculture or for carrying out any of the objects specified in clause (3a) or clause (3c) and
Works not otherwise provided for.	(4) undertake and carry out any other local work likely to promote the health, comfort or convenience of the public, and not otherwise provided for by this Act.

CHAPTER II.

DUTIES AND POWERS OF LOCAL BOARDS.

Duties of Local Board.

101. The Lieutenant-Governor, or, subject to his control, a District Board, may direct that within the area subject to the authority of a Local Board, any matter placed under the control and administration of the District Board under this Act shall be wholly or partly transferred to the control and administration of the Local Board, with adequate funds for the purposes of such control and administration.

A Local Board, as the agent of, and subject to the control of, the District Board, shall, so far as the funds at its disposal permit, make due provision for all matters transferred to its control and administration under this section.

It shall be the duty of the District Board to enforce the responsibility imposed on a Local Board by this section.

Limits on expenditure of Local Board.

102. Except as otherwise provided by this Act, a Local Board shall not incur expenses, or undertake liabilities, to any amount exceeding the limit imposed by the District Board.

Returns by Local Board.

103. * * * [²] It shall be the duty of the Local Board to procure and submit, in such form as the District Board may

[¹] Clauses (3a) to (3d) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 48 (3), in Vol. III of this Code.

[²] The words "A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and" were repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1898), s. 2, and are omitted.

(Secs. 104-107.)

prescribe, all such reports, returns and statistics as the District Board may from time to time require.

CHAPTER III.

DUTIES AND POWERS OF UNION COMMITTEES.

104. A Union Committee, as the agent of, and subject to the control of, the ^[1][District Board], shall, within the Union, have the control and administration of, and be responsible for, all matters specified in this Chapter, except such of those matters as the ^[1][District Board] may think fit to take under its direct control and administration. Union Committee to be subordinate to District Board.

105. Every Union Committee shall submit annually to the ^[2][District Board], on or before such date as the ^[2][District Board] may appoint, ^[3][an estimate of the probable receipts and expenditure of the Committee under each head of account] for the ensuing financial year, and an account of its receipts and expenditure for the past financial year; and shall also submit any other reports which the ^[2][District Board] may from time to time require. Union Committee to submit reports, estimates and accounts to District Board.

^[4]Every estimate submitted under this section shall be subject to the sanction of the District Board, who may, before sanctioning any estimate, modify it as they may think fit.

106. A Union Committee shall not incur expenses, or undertake liabilities to any amount exceeding the limit imposed by the ^[2][District Board]. Limits on expenditure of Union Committee.

107. Every Union Committee shall, within such time as the ^[2][District Board] may direct, forward to such ^[2][District Board] a schedule of all village-roads ^[5][and bridges thereon] within the Union. Union Committee to send schedule of roads and bridges to District Board.

Such schedule shall state the length and width of the roads, the number, description and dimensions of bridges, and such other particulars as the ^[2][District Board] may require.

^[1] These words "District Board," in s. 104, were substituted for the words "Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 49, in Vol. III of this Code.

^[2] These words "District Board," in ss. 105, 106 and 107, were substituted for the words "Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 50 (2), in Vol. III of this Code.

^[3] These words in square brackets in s. 105 were substituted for the words "an estimate of the probable expenditure of the Committee," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 50 (3), in Vol. III of this Code.

^[4] This clause was added to s. 105 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 50 (3), in Vol. III of this Code.

^[5] These words "and bridges thereon," in s. 107, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 50 (4), in Vol. III of this Code.

(Secs. 108-111.)

Village-roads
and bridges
placed under
control and
administra-
tion of
Union
Committee.

108. All village-roads [¹][and bridges thereon] within a Union, and the stones and other materials thereof, and also all erections, materials, implements and other things provided for such roads [²][and bridges], shall be placed under the control and administration of the Union Committee.

Maintenance
and repair of
village roads
and bridges.

109. A Union Committee shall, so far as the Union Fund permits, from time to time cause the village-roads [³][and bridges thereon] to be maintained and repaired, and may do all things necessary for such purpose, and may—

- (a) lay out and make new village-roads;
- (b) build and construct new bridges;
- (c) turn, divert, discontinue or stop up any village road [⁴][or bridge thereon]; and
- (d) widen, open, enlarge or otherwise improve any such road [⁴][or bridge thereon].

District
Board may
delegate
management
of portions of
district roads
to Union
Committee.

110. The [⁵][District Board] may, with the consent of a Union Committee, delegate to such Committee the management of so much of any road under the management of the [⁶][District Board or of a Local Board] as may be situated within such Union; and such Union Committee shall thereupon do all things necessary for the maintenance and repair of the portion of road so assigned to it, and shall be responsible to the [⁵][District Board] in that behalf.

Pounds.

[⁷]111. Every Union Committee shall perform such functions as may be transferred to it by notification under section 31 [⁸] of the Cattle-1 of 1871. trespass Act, 1871.

[¹] These words "and bridges thereon," in s. 108, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 51 (1), in Vol. III of this Code.

[²] These words "and bridges," in s. 108, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 51 (2), in Vol. III of this Code.

[³] These words "and bridges thereon," in s. 109 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 51 (1), in Vol. III of this Code.

[⁴] These words "or bridge thereon," in clauses (c) and (d) of s. 109, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 51 (3), in Vol. III of this Code.

[⁵] These words "District Board," in s. 110, were substituted for the words 'Local Board,' by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 52 (a), in Vol. III of this Code.

[⁶] These words in square brackets in s. 110, were substituted for the words "Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 52 (b), in Vol. III of this Code.

[⁷] This s. 111 was substituted for the original s. 111 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 53, in Vol. III of this Code.

[⁸] Printed in General Acts, 1868-73, Ed. 1909, p. 168.

(Secs. 112-116.)

112. Subject to any rules made by the Lieutenant-Governor under this Act, every Union Committee shall be charged with, and be responsible for, the maintenance and management of all primary schools within the Union, the appointment (subject to section 36) of the *gurus* of such schools, and the transmission to such *gurus* of any rewards that may be granted by the District Board or Local Board.

113. Subject to any rules made by the Lieutenant-Governor under this Act, a Union Committee may, with its own consent, be charged with, and made responsible for, the maintenance, management and visiting of any dispensary within the Union.

[¹] **114.** A Union Committee shall, if required to do so by the Magistrate of the district, provide for the registration of births and deaths within the Union, and shall submit such returns thereof as the said Magistrate may direct.

[³] **115.** Every Union Committee shall, subject to the control of the District Board, and in accordance with rules made by the Lieutenant-Governor under this Act,—

- (1) provide, as far as possible, for the sanitation and conservancy of the Union and the prevention of public nuisances therein;
- (2) make special arrangements for the sanitation and conservancy of fairs and *mélas* held within the Union;
- (3) have control of all drains and other conservancy works within the Union which are not under the control of any other authority; and
- (4) execute all works which are necessary for improving the sanitation, conservancy or drainage of the Union:

Provided that the District Board may itself undertake any such work which, by reason of its magnitude, or of the amount of expense likely to be incurred thereon, cannot, in the opinion of the District Board, be satisfactorily executed by the Union Committee.

[³] **116.** (1) If it appears to the Union Committee that, for any reason, it is necessary to improve the sanitary condition of any village or part of a village within the Union, the Committee may, in accordance with a

[¹] This s. 114 was substituted for the original s. 114 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 54, in Vol. III of this Code.

[²] As to the registration of births and deaths, see the Bengal Births and Deaths Registration Act, 1873 (Ben. Act 4 of 1873), *ante*, p. 151.

[³] These ss. 115 to 119 were substituted for the original ss. 115 to 119 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 55, in Vol. III of this Code.

(Sec. 117.)

scheme approved by the District Board and sanctioned by the Commissioner under rules made by the Lieutenant-Governor under this Act,—

- (a) cause huts or privies to be removed either wholly or in part;
- (b) cause private drains to be constructed, altered or removed;
- (c) cause streets, passages and public drains to be constructed or widened;
- (d) cause tanks or low lands to be filled up or deepened; and
- (e) cause such other improvements to be made as, in its opinion, are necessary to improve the condition of such village or part.

(2) The Union Committee may, by written notice,—

- (i) require the owner or occupier of any hut, or the owner of any privy, to remove such hut or privy, either wholly or in part, in pursuance of clause (a) of sub-section (1); or
- (ii) require the owner or occupier of any building to construct private drains therefor, or to alter or remove private drains thereof, in pursuance of clause (b) of sub-section (1),

within a period to be specified in the notice.

(3) If any work required by any such notice is not executed within the period specified in the notice, the Union Committee may themselves cause such work to be carried out.

(4) All expenses incurred by the Union Committee under sub-section (1) or sub-section (3), including such reasonable compensation as the Committee may think fit to pay to the owners or occupiers of huts or privies removed, shall be met out of the Union Fund.

[¹]117. (1) The Union Committee may, with the sanction of the District Board, employ a special establishment for the cleansing of any village within the Union. Cleansing of villages.

(2) If any village for which no establishment is maintained under sub-section (1) appears to the Union Committee to be in a filthy condition, the Committee may, by written notice, require the persons who occupy buildings in the village to cleanse their holdings to the satisfaction of the Committee within a period to be specified in the notice.

(3) If any person on whom notice has been served under sub-section (2) fails to comply with the requisition contained in the notice, the Union Committee shall,

unless reasonable cause to the contrary is shown, cause his holding to be cleansed, and

[¹] This s. 117 is new—see foot-note [²] on p. 693, *ante*.

(Sec. 118.)

Ben. Act 6
of 1870.

recover from such person such portion of the costs of such cleansing as may be approved by the Sanitation Committee, as if the same were an arrear of the assessment imposed under the Village-chaukidari Act, 1870^[1]; or, where the Chota Nagpur Rural Police Act, 1887, is in force, under that Act.^[2]

^[3]118. (1) The Union Committee may subject to rules made by the Lieutenant-Governor under this Act, by written order,—

Power of
Union Com-
mittee to
control
building, and
penalties for
disobedience.

(a) direct, in accordance with a scheme approved by the District Board and sanctioned by the Commissioner, in respect of any village, that no building which it is proposed to erect in such village, and no addition to any existing building therein, shall be placed in advance of an alignment to be prescribed by the Committee and demarcated on the ground, and

(b) prescribe, in accordance with the said scheme, the space which shall intervene between each new building and between new buildings and any road in the village.

(2) Where any building, or any addition thereto, has been placed in contravention of an order passed by the Union Committee under sub-section (1), the Union Committee may apply to the District Magistrate, and such Magistrate may make an order—

(i) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished by the owner of the building or altered by him to the satisfaction of the Committee, as the case may require, or

(ii) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished or altered by the Union Committee at the expense of the owner :

Provided that the Magistrate shall not make any such order without giving the owner and occupier full opportunity of adducing evidence and of being heard in defence.

(3) If any person to whom a direction to demolish or alter any building is given under sub-section (2), clause (i), fails to obey the same, he

^[1] Printed *ante*, p. 109.

^[2] The Chota Nagpur Rural Police Act, 1887 (Ben. Act 5 of 1887), has been repealed and re-enacted by the Chota Nagpur Rural Police Act, 1914 (B. and O. Act 1 of 1914), and this reference should now be construed as a reference to the latter Act, printed in Vol. III of this Code.

^[3] This s. 118 is new—see foot-note ^[3] on p. 693, *ante*.

(Sec. 118A.)

shall be liable to fine which may extend, in the case of a masonry building, to one hundred rupees, and, in the case of any other building, to twenty rupees, and to further fine which may extend, in the case of a masonry building, to ten rupees, and in the case of any other building, to two rupees, for each day during which he so fails after the first day.

[¹]118A. (1) A Union Committee may provide the Union, or any part thereof, with a supply of water proper and sufficient for public and private purposes; and, for the purposes of this section, may—

Water-supply.

- (a) construct, repair and maintain tanks or wells, clear out streams or water-courses, and do any other necessary acts;
- (b) with the sanction of the District Board, purchase or acquire by lease any tank, well, stream or water-course, or any right to take or convey water, within or without the Union;
- (c) with the consent of the owner thereof, utilize, cleanse or repair any tank, well, stream or water-course within the Union, or provide facilities for obtaining water therefrom;
- (d) deal with any tank, well, pool, ditch, drain or place containing, or used for the collection of, any drainage, filth, stagnant water or matter likely to be prejudicial to health—by draining or cleansing it, or otherwise preventing it from being prejudicial to health, but not so as in any case to interfere with any private right; or
- (e) contract with any person for a supply of water.

(2) When a Union Committee has, under clause (c), with the consent of the owner, cleansed or repaired or provided facilities for obtaining water from any tank, well, stream or water-course, the same shall, subject to any rights retained by the owner, with the concurrence of the Committee, be reserved for drinking and culinary purposes, and shall be kept open to access by the public.

(3) Any tank, well, stream or water-course which a Union Committee may construct, repair or maintain under clause (a), or purchase or acquire by lease under clause (b), shall remain under the control and administration of the Union Committee; and the Committee may, by order duly published in the village or villages in which such tank, well, stream or water-course is situated, set apart the same, or, subject to the provisions of clause (c), any other tank, well, stream or water-course within the Union, for the supply of water for drinking and culinary purposes.

[¹] Section 118A is new—see foot-note [²] on p. 693, *ante*.

(Secs. 118B.-118C.)

[¹]118B. The Union Committee, or any member, officer or servant thereof, may enter into or upon any building or land, with or without assistants or workmen, in order to make any inspection or execute any work for the purposes of, or in pursuance of, section 115, section 116, section 117, section 118 or section 118A: ^{Power of entry.}

Provided as follows:—

- (a) no such entry shall be made between sunset and sunrise;
- (b) no dwelling-house shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry; and
- (c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

[¹]118C. (1) If the income of the Union Committee from other sources is insufficient to meet the expenses incurred, or likely to be incurred, by the Committee in carrying out its duties or exercising its powers under section 115, section 116, section 117, section 118 or section 118A, ^{Method of meeting cost of works of sanitation, drainage and conservancy of villages.}

the Committee may, from time to time, impose on the owners of buildings, tanks, wells or water-courses, or the occupiers of buildings, within the Union, or in any village therein, such assessment as may be required approximately to meet the deficiency, together with ten *per cent.* above such sum to meet the expenses of collection and losses due to non-realization of their shares from defaulters:

Provided that such assessment shall not be imposed unless—

- (i) it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the Union Committee have voted, and
- (ii) it is previously sanctioned by the District Board and the Commissioner.

(2) The Union Committee shall appoint one of their number, or any other person, to receive and collect the said assessment, and to grant receipts for the same and to keep the accounts thereof; and may permit the person so appointed to retain any sum, not exceeding five *per cent.* of the amount collected by him, to repay the costs of such collection.

[¹] Sections 118B and 118C are new—see foot-note [³] on p. 693, *ante*.

(Sec. 118D.)

(3) The provisions of sections 15 to 19, 25 to 29, 31 to 34, 46A, 46B and 63 of the Village-chaukidari Act, 1870^[1] or, where the Chota Nagpur Rural Police Act, 1887, is in force, the provisions of sections 9, 10, 13, 15, 18, 20, 21, 34 and 36 of the Act^[2] shall apply to such assessment of 1870. Ben. Act 6 of 1870.
and the payment and recovery thereof:

Provided as follows—

- (a) all references in any of the said sections of the Village-chaukidari Act, 1870 ^[1] to a *panchayat* shall be construed as references to the Union Committee; Ben. Act 6 of 1870.
- (b) the references in section 46B of the said Village-chaukidari Act, 1870,^[1] to the *chaukidari* assessment shall be construed as references to the assessment imposed under this section; Ben. Act 6 of 1870.
- (c) all references in any of the said sections of the Chota Nagpur Rural Police Act, 1887, to the Deputy Commissioner or the District Superintendent of Police shall be construed as references to the Union Committee; Ben. Act 5 of 1887.
- (d) the amount to be assessed on any one person shall not exceed five rupees *per mensem*;
- (e) the amount assessed on any person may be made payable either in lump or in periodical instalments; and
- (f) the proceeds of the said assessment shall be credited to the Union Fund.

Appeals
against
orders,
awards and
assessments.

[³]118D. Any person who is aggrieved by any order of a Union Committee—

- (i) directing such person to take any action with regard to his property under sub-section (2) of section 116, sub-section (2) of section 117, or sub-section (1) of section 118, or
- (ii) awarding or refusing to award compensation to such person under sub-section (4) of section 116, or
- (iii) making an assessment in respect of any property of such person in accordance with the provisions of section 118C,

may within three months from the date of such order, appeal to a sub-committee of members of the District Board to be constituted under

[¹] Printed *ante*, p. 109.

[²] The Chota Nagpur Rural Police Act, 1887 (Ben. Act 5 of 1887) has been repealed and re-enacted by the Chota Nagpur Rural Police Act, 1914 (B. and O. Act 1 of 1914), and this reference should now be construed as a reference to that Act, ss. 8, 9, 12, 14, 16-20, 33 and 35, in Vol. III of this Code.

[³] Section 118D is new—see foot-note [²] on p. 693, *ante*.

(Secs. 119-123.)

clause (c) of section 32 of this Act; and the decision of such sub-committee shall, subject to the exercise of a power of revision at the discretion of the Commissioner, be final.

[¹]119. (1) Notwithstanding anything in the foregoing provisions of this Act, the District Board may, by order in writing, with the sanction of the Commissioner, direct that any specified Union Committee shall act as the agent of, and shall be subject to the control of, a Local Board, instead of the District Board, either for all purposes or for the purposes specified in the order.

Power of District Board to subordinate Union Committee to Local Board.

(2) Any order made under sub-section (1) may, with the like sanction, be revoked.

(3) So long as an order made under sub-section (1) with respect to any Local Board continues in force, the references to the District Board in the foregoing sections of this Act shall, so far as may be necessary, be read as if made to such Local Board.

PART IV.—CONTROL.

120. It shall be the duty of the Lieutenant-Governor and of all Commissioners and Magistrates of districts, acting under the orders of the Lieutenant-Governor, to see that the proceedings of local authorities are in conformity with law and with the rules in force thereunder.

Powers of Lieutenant-Governor and of Commissioners and of Magistrates of districts with respect to proceedings of local authorities.

The Lieutenant-Governor may, by order in writing, annul any proceeding which he considers not to be in conformity with law and with the said rules, and may do all things necessary to secure such conformity.

121. Every local authority shall at all times permit the Commissioner or the Magistrate of the district to have access to all its books, proceedings and records.

Records to be open for inspection of Commissioner or of Magistrate of district.

122. The Commissioner or the Magistrate of the district shall have power at all times to enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by, a local authority.

Power of Commissioner or of Magistrate to inspect works.

123. It shall be lawful for the Lieutenant-Governor to appoint an officer to be Inspector of Local Works in each Commissioner's division,

Appointment of Inspector of Local Works.

[¹] Section 119 is new—see foot-note [³] on p. 693, *ante*.

(Secs. 124-125.)

and duties to be performed by him. or in more than one such division, and to sanction an establishment for such officer.

It shall be the duty of the Inspector of Local Works to inspect and advise with regard to all public works under construction or repair vested in, or in charge of, any local authority within the division.

The Inspector of Local Works shall also perform such duties and exercise such powers as may be assigned to him by any rules made by the Lieutenant-Governor under this Act.

The Inspector of Local Works may at all times enter upon, or cause to be entered upon, any immovable property belonging to any local authority in the division, or any work in progress under its direction, and may require it to furnish such statements, estimates and reports as he thinks fit.

A report of every inspection shall be prepared and a copy thereof forwarded to the District Board concerned, through the Magistrate of the district.

In all matters of professional detail the local authority shall be guided by the report of the Inspector of Local Works.

Power to suspend action of local authorities by Magistrate of district and Commissioner.

124. The Magistrate of the district, or the Commissioner, may, by order in writing, suspend the execution of any order or resolution of a local authority within the jurisdiction of such Magistrate or Commissioner, or the doing of any act which is about to be done, or is being done, by such local authority, if in his opinion the execution of the resolution or order, or the doing of the act, is likely to cause injury or annoyance to the public, or to any class or body of persons, or to lead to a breach of the peace.

Power to provide for performance of duties in case of default by District Board.

125. When the Commissioner is informed, on complaint made or otherwise, that a District Board has made default in performing any duty imposed on it by or under this Act, the Commissioner, if satisfied, after due inquiry, that such District Board has made default as alleged, may, by order in writing fix a period for the performance of that duty.

If that duty is not performed within the period so fixed, the Commissioner may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the District Board.

If the expense and remuneration are not so paid, the Commissioner may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible, from that balance, and such person shall make payment accordingly.

(Secs. 126-130.)

126. In case of emergency the Magistrate of the district may provide for the execution of any work, or the doing of any act, which a local authority is empowered to execute or do, and the immediate execution or doing of which is in his opinion necessary for the service or safety of the public, and may direct that the expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the District Board.

Extraordinary powers in case of emergency.

If the expense and remuneration are not so paid, the Magistrate may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible, from that balance; and such person shall make payment accordingly.

127. When the Magistrate of the district makes any order under sections 124 or 126, he shall forthwith submit to the Commissioner a copy of the order, with a statement of his reasons for making it, and with any explanation which the local authority concerned may wish to offer, and the Commissioner may thereupon confirm, modify or rescind the order.

Magistrate's order under sections 124 and 126 to be reported to Commissioner, who may confirm, modify or rescind it.

128. In every case under the last preceding section in which the Commissioner confirms or modifies any order, he shall forthwith submit to the Lieutenant-Governor a copy of the proceedings, and the Lieutenant-Governor may thereupon confirm, modify or rescind the order of the Commissioner.

Commissioner's proceedings to be submitted to Lieutenant-Governor for final orders.

129. When the Commissioner makes any order under section 124 or 125, he shall forthwith submit to the Lieutenant-Governor a copy of the order, with a statement of his reasons for making it, and with any explanation which the local authority concerned may wish to offer, and the Lieutenant-Governor may thereupon confirm, modify or rescind the order.

Commissioner's orders under sections 124 and 125 to be submitted to Lieutenant-Governor.

130. All powers conferred upon Commissioners and Magistrates of districts in regard to District Boards by sections 124 [1]¹[125] and 126 shall be exercised,

Powers and duties of Commissioner and Magistrate of district transferred to District Board and Local Board.

[¹] These figures "125," in this paragraph of s. 130, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 56 (a), in Vol. III of this Code.

(Secs. 131-132.)

in respect of a Union Committee, [¹][by the District Board or the Local Board to which the Committee may have been declared, by an order under section 119, to be, for the purposes of this section, subordinate], and,

in respect of a Local Board, by the District Board.

When a Local Board makes any order under this section, it shall forthwith submit to the District Board a copy of the order, with a statement of its reasons for making it, and with any explanation which the Union Committee concerned may wish to offer.

The District Board may thereupon confirm, modify or rescind the order.

When a District Board makes any order under this section, it shall forthwith submit to the Magistrate of the district, for submission to the Commissioner, a copy of the order, with a statement of its reasons for making it, and with any explanation which the Local Board [²][or Union Committee] may wish to offer.

If the Commissioner is dissatisfied with the order, he may report the matter to the Lieutenant-Governor, who may thereupon confirm, modify or rescind the order.

Power of
Lieutenant-
Governor to
supersede Dis-
trict Board or
Local Board
or Union
Committee in
case of in-
competency
or wilful neg-
lect of duty.

131. If a District Board or Local Board [³][or Union Committee] is not competent to perform, or persistently makes default in the performance of, the duties imposed on it by or under this or any other Act, or exceeds or abuses its powers, the Lieutenant-Governor may, by notification, specifying the reason for so doing, supersede such District Board or Local Board [³][or Union Committee] for a period to be specified in such notification.

Consequences
of super-
session.

132. When a District Board or Local Board [⁴][or Union Committee] is superseded under the last preceding section, the following consequences shall ensue—

(a) all members constituting the District Board or Local Board [⁴][or Union Committee] shall, from the date of the notification, vacate their offices as such members;

[¹] These words in square brackets in this paragraph of s. 130 were substituted for the words "by the Local Board" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 56 (b), in Vol. III of this Code.

[²] These words "or Union Committee," in this paragraph of s. 130 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 56 (2), in Vol. III of this Code.

[³] These words "or Union Committee" in s. 131 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 57, in Vol. III of this Code.

[⁴] These words "or Union Committee," in s. 132, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 58 (1), in Vol. III of this Code.

(Secs. 133-134.)

- (b) all powers and duties of the District Board or Local Board [¹][or Union Committee] may, until such District Board or Local Board [¹][or Union Committee] is re-constituted, be exercised and performed by such person or persons as the Lieutenant-Governor may from time to time appoint in that behalf;
- (c) when a District Board is superseded, all property vested in it shall, pending the re-constitution of the Board, be vested in the Lieutenant-Governor.

On the expiration of the period of supersession specified in the notification, the Board [²][or Committee] shall be re-established, and the persons who vacated their offices under clause (a) shall be eligible for appointment or election.

Nevertheless it shall be lawful for the Lieutenant-Governor to direct that a Local Board re-established under this section shall consist entirely of appointed members, although such Local Board may have been established in the district mentioned in the third Schedule of this Act.

[³]133. (1) If a dispute arises between two or more Union Committees which are subordinate to the same District Board, or which have been declared by any order under section 119 to be, for the purposes of this section, subordinate to the same Local Board, the matter shall be referred to such District Board or Local Board, as the case may be; and the decision of the Board thereon shall be final and binding.

Disputes between two or more Union Committees when to be referred to District Board or Local Board.

(2) If a dispute arises between two or more Union Committees within the same district, and such Committees have not all been so declared to be subordinate to the same Local Board, the matter shall be referred to the District Board; and the decision of the District Board thereon shall be final and binding.

134. (*Disputes between two or more Union Committees under the authority of different Local Boards to be referred to District Board when Local Boards cannot agree*). Rep. by the Bengal Local Self-Government (Amendment), Act, 1908, s. 59.

[¹] These words "or Union Committee," in s. 132, were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 58 (1), in Vol. III of this Code.

[²] These words "or Committee" in s. 132 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 58 (2), in Vol. III of this Code.

[³] This s. 133 was substituted for the original ss. 133 and 134 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 59, in Vol. III of this Code.

(Secs. 135-138.)

Disputes
between two
or more
Local Boards
to be referred
to District
Board.

135. If a dispute arises between two or more Local Boards within the area under the authority of a District Board, the matter shall be referred to the District Board, and the decision of such District Board upon the matter so referred shall be final and binding.

Disputes
between
municipal
authorities
or local
authorities
in the same
district to be
referred to
Magistrate of
district.

136. If a dispute arises between a municipal authority or authorities and a local authority or authorities within the same district, the matter shall be referred to the Magistrate of the district, and the decision of the Magistrate upon the matter so referred shall be final and binding:

Provided that, if the Magistrate is a member of one of the authorities concerned, his functions under this section shall be discharged by the Commissioner.

Decision of
disputes not
otherwise
provided for.

137. If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more local authorities, or between a local authority or authorities and a municipal authority or authorities, the matter shall be referred—

- (a) to the Commissioner or Commissioners of the Division or Divisions, if the local authorities concerned are in different districts; and
- (b) to the Lieutenant-Governor, if the local authorities concerned are in different divisions and the Commissioners of those divisions cannot agree.

And the decision of the Commissioner or Commissioners, or of the Lieutenant-Governor, as the case may be, upon the matter so referred shall be final and binding.

Power of
Lieutenant-
Governor to
make rules.

138. It shall be lawful for the Lieutenant-Governor to make rules,^[1] consistent with this Act, for any District Board or Local Board or Union Committee for the purposes of—

- (a) determining the mode and time of appointment or election of members of Boards and Committees, the term of office and the qualifications and disqualifications of such members, and the qualifications and disqualifications and the registration of voters and candidates, and generally for regulating all elections under this Act ^[2] [and determining the authority who shall decide disputes relating to such elections];

^[1] For lists of rules made under s. 138, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] These words in square brackets were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (1), in Vol. III of this Code.

(Sec. 138.)

- (b) regulating the conduct of proceedings of Boards and Committees, including the manner in which the notices of a meeting shall be given, the fixing of a quorum, the due record of proceedings and the language in which business shall be transacted;
- (c) fixing the time within which a Chairman or Vice-Chairman may be elected;
- (d) regulating the powers of District Boards to transfer property;
- (e) regulating the powers of Boards and Committees to contract and do other things necessary for the purposes of their constitution and the mode of executing contracts;
- (f) determining the [¹][intermediate] offices, if any, through which correspondence between Boards and Committees, or members of Boards and Committees, and the Lieutenant-Governor or his officers, shall pass;
- (g) prescribing the qualifications of candidates for employment under section 33, [²][and declaring what circumstances shall be a disqualification for continuance of employment under that section];
- (h) prescribing the times for holding meetings and for submitting statements, estimates, reports or accounts under sections 46 and 47;
- [³](h1) prescribing the conditions on which a house and land may be acquired or on which land may be acquired and a house constructed, by the District Board, for the residence of the District Engineer, and the terms on which the District Engineer may be required to occupy the same;
- [³](h2) regulating the application of the balance of the District Fund mentioned in clause (1) of section 52 of this Act to objects other than those mentioned in section 109 [⁴] of the Cess Act, 1880, as amended by this Act.
- (i) prescribing forms for statements, estimates and accounts and regulating the keeping, checking and publication of such accounts and the manner of periodical audit under sections 54 and 55;

Ben. Act 9
of 1880.

[¹] This word "intermediate" was substituted for the word "immediate" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (2), in Vol. III of this Code.

[²] These words in square brackets in clause (g) were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (3), in Vol. III of this Code.

[³] Clauses (h1) and (h2) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (4), in Vol. III of this Code.

[⁴] Printed *ante*, p. 373.

(Sec. 138.)

- (j) regulating the maintenance and management of schools under sections 62, 63 and 64, the construction and repair of buildings connected therewith, and the appointment of masters and assistant masters, and the proper distribution of funds transferred to District Boards under section 65;
- [¹](j1) prescribing the condition subject to which grants-in-aid may be made under section 63 or section 64A;
- [¹](j2) regulating the provision, maintenance and management of students' hostels under section 64A;
- [¹](j3) prescribing the powers and duties of Education Committees, and regulating the removal of members from office;
- (k) regulating the control and administration of dispensaries, hospitals and places of reception for the sick, the construction and repair of buildings connected therewith, and the supply of medicines and medical assistance for the poorer inhabitants of the district, [²][the training and employment of compounders, midwives and veterinary practitioners, and the promotion of free vaccination];
- (l) prescribing the procedure to be adopted in the appointment of the Engineer to the District Board under section 84, and regulating the performance and exercise of the duties and powers of such Engineer and of the Inspector of Local Works under sections 85 and 123, respectively;
- (m) regulating the submission for approval of plans, designs, specifications and estimates under section 86, [³][and prescribing conditions precedent to the making of any contribution under section 79];
- [⁴](m1) prescribing, for the purposes of section 86A of this Act, the mode of ascertaining the capitalized value of the estimated cost to the District Board of maintaining bridges, road-ways or foot-ways, and of renewing any bridge, road-way or foot-way which requires periodical renewal, and

[¹] Clauses (j1), (j2) and (j3) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (5), in Vol. III of this Code.

[²] These words in square brackets in clause (k) were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (6), in Vol. III of this Code.

[³] These words in square brackets in clause (m) were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (7), in Vol. III of this Code.

[⁴] Clauses (m1) and (m2) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (8), in Vol. III of this Code.

(Sec. 138.)

the mode of determining what classes of bridges, roadways or foot-ways require periodical renewal;

[¹](*m2*) prescribing, for the purposes of section 86C, the method in which the proceeds of tolls, or of the lease thereof, shall be adjusted between the District Boards of adjacent districts;

(*n*) regulating the duties and powers of District Boards [²][and Sanitation Committees] in regard to sanitation;

(*o*) regulating the duties of District Boards in regard to taking a census;

[³](*o1*) regulating the duties of District Boards in regard to the relief of famine, serious distress or scarcity;

(*p*) regulating the establishment and maintenance of staging bungalow and *sarais*, the holding of fairs and exhibitions, the offer of rewards for the destruction of noxious animals, [⁴][the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle or asses and the breeding of mules, the making of grants-in-aid under clause (3*d*) of section 100 of this Act], and the carrying out of any other work likely to promote the health, comfort or convenience of the public;

(*q*) regulating the powers of Union Committees in regard to primary schools and dispensaries under sections 112 and 113;

[⁵](*q1*) regulating the powers and duties of Union Committees in regard to sanitation, conservancy and drainage under sections 115 to 118C (both inclusive), and defining and prohibiting public nuisances within Unions;

(*r*) providing for the appointment and payment of auditors of the accounts of Boards and Committees;

[¹] Clauses (*m1*) and (*m2*) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (8), in Vol. III of this Code.

[²] These words in square brackets in clause (*n*) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (9), in Vol. III of this Code.

[³] Clause (*o1*) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (10), in Vol. III of this Code.

[⁴] These words in square brackets were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (11), in Vol. III of this Code.

[⁵] Clause (*q1*) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (12), in Vol. III of this Code.

(Secs. 139-140.)

- (s) affording guidance to District Boards when suits or other proceedings are threatened or have been instituted by or against them in Civil Courts; and
- (t) generally, determining the relations between District Boards, Local Boards and Union Committees, and for the guidance of Boards and Committees and Government officers in all matters connected with the carrying out of the provisions of this Act;

and may from time to time repeal or alter such rules.

Rules made under this section shall be published in such manner as the Lieutenant-Governor may direct, and shall thereupon have the force of law;

and no rules under clause (a) shall come into operation until three months after they have been published as aforesaid.

[¹]In making any rule under clause (g1) of this section, the Lieutenant-Governor may provide that a breach of the same shall be punished with fine which may extend to ten rupees.

By-laws.

Power of District Board and Local Board to make by-laws.

139. Every District Board or Local Board empowered in this behalf by the Lieutenant-Governor may, [²][subject to the control of the Lieutenant-Governor,] make by-laws[³] for carrying out all or any of the purposes of this Act.

By-laws made under this section shall have the force of law when [⁴][confirmed by the Commissioner] and published in such manner and for such time as the Lieutenant-Governor may direct.

Penalty for infringement of by-laws.

140. In making a by-law under the last preceding section a Board may provide that a breach of the same shall be punished with fine which may extend to fifty rupees, and in the case of a continuing breach with a further fine which may extend to five rupees for every day during which the breach is continued after the offender has been convicted of such breach.

[¹] This clause was added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (13), in Vol. III of this Code.

[²] These words in square brackets in s. 139 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 61 (a), in Vol. III of this Code.

[³] For lists of by-laws made under s. 139, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[⁴] These words in square brackets in s. 139 were substituted for the words " confirmed " by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60 (b), in Vol. III of this Code.

(Secs. 141-144.)

141. Prosecutions under this Act for breach of by-laws may be instituted by any Board, or by any person authorized by the Board in this behalf. Prosecutions.

10 of 1882. A Judge or Magistrate shall not be deemed to be, within the meaning of section 555 of the Code of Criminal Procedure,^[1] a party to, or personally interested in, any case under this section merely because he is a member of the Board.

Miscellaneous Provisions.

142. No person shall be liable for the loss, waste or misapplication of any money or other property belonging to the District Board,^[2] [Local Board] or Union Committee, unless such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of a Union Committee, Local Board or District Board; and a suit for compensation for the same may be instituted against him, in such Court as the Lieutenant-Governor directs, by the District Board with the sanction of the Lieutenant-Governor or by the Secretary of State for India in Council. Liability of members of Boards and Union Committees.

143. The Lieutenant-Governor, before making any rules under section 138, and a District Board or Local Board, before making any by-laws under section 139, shall publish in such manner as the Lieutenant-Governor deems sufficient for giving information to persons interested the proposed rules or by-laws, together with a notice specifying a date on or after which the same will be taken into consideration; and shall, before making such rules or by-laws, receive and consider any objection or suggestion which may be made by any person with respect to the same before the date so specified. Procedure for making rules and by-laws.

Every such rule or by-law shall be published in the Calcutta Gazette in English, and in such other language as the Lieutenant-Governor directs, and such publication shall be evidence that the rule or by-law has been made as required by this section.

144. If any member of a local authority, or any officer or servant maintained by or employed under a local authority, has, directly or indirectly, any share or interest in any work done by order of the local authority of which he is a member, or by which he is maintained, or under which he is employed, or in any contract with or under such local authority, he shall be liable on conviction before a Criminal Court to a fine which may extend to five hundred rupees: Penalty on member, officer or servant being interested in contracts made with a local authority.

[¹] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to s. 556 of that Code—see s. 3 (1) thereof, in General Acts, 1898-03, Ed. 1909, p. 40.

[²] These words "Local Board" were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 62, in Vol. III of this Code.

(Secs. 145-146.)

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person—

- (a) having a share in any joint-stock company which shall contract with, or be employed by, or on behalf of, the local authority; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the local authority may be inserted; or
- (c) holding a debenture or being otherwise concerned in any loan raised by, or on behalf of, the local authority.

Nevertheless it shall not be lawful for a person having any share or interest, such as is described in clauses (a) and (b), to act as a member of the local authority in any matter relating to a contract of agreement between the local authority and such company or the manager or publisher of such newspaper.

[¹]Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.

Power to make compensation out of the Local Fund.

145. Every local authority may make compensation out of the District or Union Funds respectively to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

No action to be brought against the members of Boards and Committees or their officers until after one month's notice of cause of action.

146. No suit shall be brought against the members of any District Board, Local Board or Union Committee, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board or Committee, and also (if the suit is intended to be brought against any officer of the said Board or Committee, or any person acting under their direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit;

and, unless such notice be proved, the Court shall find for the defendant.

Every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards.

If any such person to whom any such notice is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

[¹] This clause was added to s. 144 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 63, in Vol. III of this Code.

(Schedules.)

THE FIRST SCHEDULE.

(See section 2.)

REPEAL OF ENACTMENT.

Number and year.	Subject.	Extent of repeal.
Bengal Act 9 of 1880. ¹	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of provincial public works.	Sections 110 to 181, both inclusive. Section 182, clauses (a), (b), (c), (e), (g) and (h).

THE SECOND SCHEDULE.

(See section 2.)

AMENDMENT OF ENACTMENT.

Number and year.	Subject.	Extent of amendment.
Bengal Act 9 of 1880. ¹	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of provincial public works.	<p>In section 4 the following definitions shall be substituted for the definition of "the Committee" :—</p> <p>"'District Board' means the Board constituted under the provisions of the Bengal Local Self-Government Act of 1885."</p> <p>"'District Fund' means the Fund formed under section 52 of the Bengal Local Self-Government Act of 1885."</p> <p>In section 9, the words "and, together with other assets of such fund, shall be applied to the purposes mentioned in section 2[109]" shall be omitted.</p> <p>The following section shall be substituted for section 38 :—</p> <p>"The road cess for each year shall be assessed and levied in each districts as provided in section 6, and (subject to the maximum rate in that section mentioned) at such rate as may be determined for such year by the District Board."</p> <p>Rate at which road cess shall be levied how to be fixed.</p>

[¹] Printed *ante*, p. 373.[²] The figures "109" were substituted for the figures "111" by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

(Schedules.)

THE SECOND SCHEDULE.

(See section 2.)

AMENDMENT OF ENACTMENT.

Number and year.	Subject.	Extent of amendment.
Bengal Act 9 of 1880. ¹	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of Provincial Public works.	<p>In section 40, omit the words "as provided in section 155."</p> <p>In sections 82 and 83, the words "District Road Funds" and "District Road Fund" shall be substituted for the words "Committees" and "Committee" respectively.</p> <p>In section 98, the words "District Road Fund" shall be substituted for the words "District Road Committee."</p> <p>In section 108, the words "and of all sums whatsoever which may be at the disposal of the District Road Committee as herein after appointed" shall be omitted.</p> <p>The following new section shall be substituted for section 109 :—</p> <p>(a) [Printed <i>ante</i>, p. 416.]</p>

THE THIRD SCHEDULE.

(See sections 6 and 9.)^[2]

Districts in every Subdivision of which a Local Board shall be established.

District.	District.
<p>[24-Parganas.]</p> <p>[Nadia.]</p> <p>[Murshidabad.]</p> <p>[Jessore.]</p> <p>[Khulna.]</p> <p>[Hooghly.]</p> <p>[Howrah.]</p> <p>[Burdwan.]</p>	<p>[Midnapore.]</p> <p>[Bankura.]</p> <p>[Birbhum.]</p> <p>[Dacca.]</p> <p>[Faridpur.]</p> <p>[Rajshahi.]</p> <p>[Pabna.]</p> <p>Patna.</p>

^[1] Printed *ante*, p. 373.

^[2] Schedule III is referred to in ss. 6, 9, 11, 14 and 15.

BENGAL ACT 1 OF 1886.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1886.]

CONTENTS.

PREAMBLE.

SECTION.

1. Extent.
- Commencement.
2. (*Repealed.*)
3. New section substituted for section 6.
4. Amendment of section 8.
5. New section substituted for section 9.
6. New section to follow section 9.
7. Amendment of section 22.
8. (*Repealed.*)
9. Amendment of section 41.
10. New section substituted for section 43.
11. New section substituted for section 44.
12. Amendment of section 45.
13. New sections to follow section 46.

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BENGAL ACT 1 OF 1886.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1886.][¹]

(2nd June, 1886.)

**An Act to further amend the Village-chaukidari Act,
1870.[²]**

Ben. Act 6 of 1870. Whereas it is expedient to further amend the Village-chaukidari Act, Preamble.
1870; [²] It is enacted as follows:—

PRELIMINARY.

1. This Act shall be read with, and taken as part of, Bengal Act 6 Extent.
of 1870[²] as amended by Bengal Act 1 of 1871.

And it shall come into force in all districts to which Bengal Act 6 Commence-
of 1870, [²] as amended by Bengal Act 1 of 1871, has been extended. [³] ment.

2. (*New section substituted for section 3.*) *Rep. by the Repealing
and Amending Act, 1897 (5 of 1897).*

3. For section 6 the following shall be substituted:—

New section
substituted
for section 6.

6. [Printed *ante*, p. 111.]

4. In section 8, for the words “fifteen days” shall be substituted Amendment
the words “thirty days,” and for the words “two years” shall be of section 8.
substituted the words “three years.”

5. For section 9 the following shall be substituted:—

New section
substituted
for section 9.

9. [Printed *ante*, p. 112.]

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1886, Pt. IV, page 9; for Report of Select Committee, see *ibid*, page 13; and for Proceedings in Council, see *ibid* Supplement, pages 144, 189, 493, 616 and 736.

LOCAL EXTENT.—This Act is to be read with and taken as part of, the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870)—see s. 1. Its local extent is therefore the same as that of the latter Act, as to which see footnote [¹] on p. 109, *ante*. S. 1 of the present Act further declares that the Act shall come into force in all districts to which Ben. Act 6 of 1870, as amended by Ben. Act 1 of 1871, has been extended.

The application of the Act in the deregulationised tracts is barred as follows, namely:—
in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),
in Vol. I of this Code; and

in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872),
s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation,
1899 (3 of 1899), s. 3, in Vol. I of this Code.

[²] Printed *ante*, p. 109.

[³] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

(Secs. 6-13.)

New section
to follow
section 9.

6. After section 9 the following shall be inserted :—

9A, 9B. [Printed *ante*, p. 112.]

Amendment
of section 22.

7. In section 22, for the words “six *per cent.*” shall be substituted the words “ten *per cent.*”

8. (*Amendment of section 39.*) *Rep. by the Repealing and Amending Act, 1897 (5 of 1897).*

Amendment
of section 41.

9. In section 41, after the words “such member shall himself report the same” and before the words “to such officer” shall be inserted the following :—

“or cause the same to be reported.”

New section
substituted
for section 43.

10. For section 43 the following shall be substituted :—

43. [Printed *ante*, p. 119.]

New section
substituted
for section 44.

11. For section 44 the following shall be substituted :—

44. [Printed *ante*, p. 120.]

Amendment
of section 45.

12. In section 45 for the words “shall issue his warrant” shall be substituted the words “may issue his warrant,” and at the end of the section the following shall be added :—

[Printed *ante*, p. 120.]

New sections
to follow
section 46.

13. After section 46 the following shall be inserted :—

46A. *Superseded by the Bengal Village-Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 17, in Vol. III of this Code.*

46B. [Printed *ante*, p. 121.]

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BENGAL ACT 3 OF 1886.

[THE BENGAL MUNICIPAL (AMENDMENT) ACT, 1886.][¹]

(6th October, 1886.)

An Act to amend * * * * [²] Act 3 (B. C.) of
1884.

Whereas it is expedient to amend * * * * [²]
Bengal Act 3 of 1884; It is enacted as follows:—

1. (*Commencement of Act.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. For * * * * [²] section 251 of Bengal Act, 3 of 1884 the following shall be substituted:—

251. [Printed *ante*, p. 585.]

3. After * * * * [²] section 251 of Bengal Act, 3 of 1884 the following sections shall be inserted:—

251A to 251D. [Printed *ante*, p. 586.]

New section substituted for section 251 of Ben. Act 3 of 1884.
New sections to follow section 251 of Ben. Act 3 of 1884.

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—Bill (without Statement of Objects and Reasons) published in Calcutta Gazette, 1886, Pt. IV, p. 129; for Proceedings in Council, see *ibid*, Supplement, pages 1865 and 1967.

LOCAL EXTENT.—The local extent of Ben. Act 3 of 1886 is the same as that of Ben. Act 3 of 1884, as to which see foot-notes on p. 501, *ante*.

[²] Ben. Act 3 of 1886, so far as it amended Ben. Act 4 of 1876 (the Calcutta Municipal Consolidation Act, 1876), having been repealed by Ben. Act 2 of 1888 (the Calcutta Municipal Consolidation Act, 1888), the references to the said Ben. Act 4 of 1876 have here been omitted.

BENGAL ACT 1 OF 1887.

(THE CALCUTTA SURVEY ACT, 1887.)

CONTENTS.

PREAMBLE.

SECTION.

1. Short title.
(*Commencement.*) *Repealed.*
Local extent.
2. Interpretation-clause.
3. Local Government may order survey and appoint Superintendent.
4. Superintendent may enter upon land.
5. Superintendent to give notice before entering on land.
6. Persons summoned failing to appear are bound by the survey.
7. In case of dispute, Assistant Superintendent to hold an inquiry.
8. Procedure in case of dispute as to boundaries.
9. Power of Assistant Superintendent to enforce attendance of witnesses.
10. After inquiry, Assistant Superintendent to record his decision.
11. An appeal shall lie to the Board of Revenue.
12. Power to refer to arbitration.
13. On failure of an arbitrator to act, another may be appointed.
14. Appointment of an umpire.
15. Power to enforce attendance of witnesses in an arbitration.
16. On failure to make an award, Assistant Superintendent may supersede the arbitration.
17. The award.
18. Superintendent may erect boundary-marks.
19. Maintenance of temporary boundary-marks.
20. All documents connected with the survey to be sent to the Municipal office.
21. Approval of the survey by the Local Government to be notified.
22. No suit shall lie unless brought within one year.
23. Local Government may make rules under the Act.
24. How notices may be served.
25. Penalty for failure to comply with requisition in notice.
26. Proceedings not to be affected by informality.
27. Power of Local Government to extend this Act to the suburbs.

BENGAL ACT 1 OF 1887.

(THE CALCUTTA SURVEY ACT, 1887.)^[1]

(2nd February, 1887.)

An Act to provide for a Survey of the Town of Calcutta.

Whereas it is expedient to provide for the survey and demarcation of land in the town of Calcutta; It is hereby enacted as follows:—

1. This Act shall be called the Calcutta Survey Act, 1887; Short title.

(Commencement.) *Rep. by the Amending Act, 1903 (1 of 1903).*

It extends to the town of Calcutta within the local limits of the ordinary original civil jurisdiction of Her Majesty's High Court of Judicature at Fort William in Bengal. Local extent.

2. In this Act, unless there be something repugnant in the subject or context,— Interpretation-clause.

“survey” includes identification of boundaries and all other operations antecedent to, or connected with, survey: “Survey.”

“Superintendent” means the Superintendent of Survey under this Act: “Superintendent.”

“land” includes anything attached to the earth or permanently fastened to anything attached to the earth: “Land.”

“premises” means any land described as such in the registers of the Corporation of the town of Calcutta^[2] or as a holding in the registers of the Calcutta Collectorate:^[2] “Premises.”

“owner” includes— “Owner.”

(a) the person having permanent interest in any land or premises;

(b) an agent of, or manager on behalf of, such person;

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1886, Pt. IV, p. 141; and for Proceedings in Council, see *ibid*, 1886, Supplement, pp. 2481, 2531; *ibid*, 1887, Supplement, pp. 91 and 98.

LOCAL EXTENT.—This Act, as originally passed, applied only to Calcutta (see s. 1), with power to extend it to the suburbs of Calcutta (see s. 27); but it is declared by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), s. 223A (printed *ante*, p. 576), that “The Commissioners at a meeting may order that a survey shall be made of the lands situated in the municipality, and thereupon all the provisions of the Calcutta Survey Act, 1887, shall, so far as may be practicable, apply and be extended to such municipality.” The present Act is therefore applicable to all provincial Municipalities in Bihar and Orissa.

OTHER ENACTMENTS.—As to surveys in Bengal, see also the Bengal Survey Act, 1875 (Ben. Act 5 of 1875), *ante*, p. 163.

^[2] As to the application of this Act in Provincial Municipalities, see the “Local Extent” footnote above.

(Secs. 3-6.)

(c) a trustee of such person;

(d) a body corporate in which land is vested by operation of Statute.

Local Govern-
ment may
order survey
and appoint
Superintend-
ent.

3. The Local Government may, whenever it thinks fit, order, by a notification in the Calcutta Gazette, that a survey shall be made of the lands situated in the town of Calcutta,^[1] and for such purpose may appoint a Superintendent of Survey, and one or more Assistant Superintendents of Survey.

The Assistant Superintendents of Survey shall exercise such powers as may be delegated to them by the Superintendent.

Superintend-
ent may enter
upon land.

4. The Superintendent of Survey shall, for the purposes of this Act, have power, either by himself or by an Assistant Superintendent of Survey or by other officers employed in the survey, to enter, between the hours of sunrise and sunset, upon any land or premises within the local limits aforesaid, without being liable to any legal proceedings whatsoever on account of such entry, or of anything done on such land or premises in pursuance of this Act:

Provided that no such entry shall be made upon lands or premises which may be occupied at the time, unless with the consent of the occupier thereof, or without previously giving the said occupier twenty-four hours' notice of the intention to do so.

Superintend-
ent to give
notice before
entering on
land.

5. Before entering on any land or premises for the purposes of survey, the Superintendent may cause a notice in writing under his hand to be served on the owner of the land or premises about to be surveyed, and on the owners of conterminous lands or premises, calling upon them to attend either personally or by agent on such land or premises, before him or before such officer as may be authorized by him in that behalf, within a specified time (which shall not be less than three days after the service of such notice) for the purpose of pointing out boundaries, and of affording such information as may be needed for the purposes of this Act; and every person on whom such notice may be served shall be legally bound to attend as required by the notice, and to give any information which may be required so far as he may be able to give it.

Persons sum-
moned fail-
ing to appear
are bound by
the survey.

6. If, after due service of notice under the last preceding section, any person fails to appear without showing sufficient cause to the satisfaction of the Superintendent, the Superintendent, or such officer as may be authorized by him, may proceed with the survey; and the person who is so absent shall be bound by the results of the survey in the same manner and to the same extent as if the survey were made in his presence.

[¹] As to the application of this Act in Provincial Municipalities, see the "Local Extent" footnote, *ante*, p. 721.

(Secs. 7-12.)

7. If in the course of survey it shall come to the notice of the Superintendent that a dispute exists as to any boundaries which should be surveyed, the Superintendent shall cause an inquiry to be held by an Assistant Superintendent, as hereinafter provided, for the purpose of determining such boundaries.

In case of dispute, Assistant Superintendent to hold an inquiry

8. When any dispute exists as to any boundaries, the Assistant Superintendent who may be authorized by the Superintendent in this behalf shall cause a notice in writing under his hand to be served on the parties concerned requiring them to appear before him, in person or by an authorized agent, on a specified day, and to produce evidence of possession of the land in dispute.

Procedure in case of dispute as to boundaries.

The Assistant Superintendent shall, on the specified day, or on such other day to which the hearing may be adjourned, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence as he may think necessary, and without reference to the merits of the claim of any of such parties to a right to possess the land in dispute, decide which of the parties is in possession of the said land at the time of the survey.

9. For the purposes of the inquiry aforesaid the Assistant Superintendent shall have power to summon and enforce the attendance of witnesses and compel the production of documents by the same means and in the same manner as if provided in the case of a Court under the Code of Civil Procedure.^[1]

Power of Assistant Superintendent to enforce attendance of witnesses.

10. After the inquiry has been completed, the Assistant Superintendent shall pass an order in writing defining clearly the subject of dispute, and shall record his decision, and the reasons for such decision.

After inquiry, Assistant Superintendent to record his decision.

11. An appeal shall lie from any order passed by an Assistant Superintendent under the last preceding section to the Board of Revenue,^[2] or to such other authority as the Local Government may, by notification in the Calcutta Gazette, appoint in this behalf, if preferred within thirty days from the date of such order.

An appeal shall lie to the Board of Revenue.

12. In every case of disputed boundaries the Assistant Superintendent authorized to hold the inquiry may, on the written application of the parties, refer the dispute to one or more arbitrators nominated by the parties respectively, and shall fix such time, and allow such extension of time, as may seem reasonable for the delivery of the award:

Power to refer to arbitration.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof, in General Acts, 1904-09, Ed. 1909, p. 184.

^[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 13-18.)

Provided that, if it appears to the Assistant Superintendent that the Local Government or the Corporation of Calcutta^[1] is interested in any such dispute, he shall appoint, in the former case, the Collector or Deputy Collector of Calcutta,^[1] and, in the latter case, the Collector or Vice-Chairman or Surveyor of the Corporation,^[1] one of the arbitrators, unless the parties agree to such officer being appointed sole arbitrator.

On failure of an arbitrator to act, another may be appointed.

13. Where an arbitrator nominated by a party refuses to act or becomes incapable of acting by reason of death or other sufficient cause, the party by whom he was nominated may, by a written application to the Assistant Superintendent, nominate another arbitrator; and, on being satisfied that the application has been made on sufficient grounds, he shall confirm such nomination; and the arbitrator so appointed may thereupon proceed with the inquiry.

Appointment of an umpire.

14. If the arbitrators differ, the award shall be in accordance with the opinion of the majority, if they are equally divided in opinion, it shall be competent to them or to the Assistant Superintendent, on the written application of the arbitrators or of the parties to the arbitration, to appoint an umpire, and the decision of the umpire determining the boundaries in dispute shall have the force of an award of the arbitrators.

Power to enforce attendance of witnesses in an arbitration.

15. The Assistant Superintendent shall, on the application of the arbitrators or umpire, issue the same processes to parties and witnesses as he may issue in inquiries held by himself.

On failure to make an award, Assistant Superintendent may supersede the arbitration. The award.

16. If the arbitrators or the umpire appointed under the preceding sections fail to deliver the award within the time allowed by the Assistant Superintendent, he may make an order superseding the arbitration, and in such case he shall proceed with the inquiry.

17. The award shall be made in writing, and shall be signed by the persons making it, and shall be filed in the office of the Superintendent, with any evidence which may have been taken by the arbitrators or the umpire.

The Superintendent shall lay down the boundaries in accordance with the award.

Superintendent may erect boundary-marks.

18. The Superintendent may at any time cause to be erected, on any land which is to be, or has been, surveyed under this Act, temporary or permanent boundary-marks of such materials and in such number and manner as he may determine to be sufficient.

^[1] As to the application of this Act in Provincial Municipalities, see foot-note ^[1] on p. 721, *ante*.

(Secs. 19-24.)

19. When any temporary boundary-mark has been erected under the last preceding section, the Superintendent may cause a notice in writing under his hand to be served on the owner or person in occupation of the land or premises whereon, or adjoining which, such boundary-mark is situate, requiring him to maintain and keep in repair such boundary-mark till the survey has been completed.

Maintenance of temporary boundary-marks.

20. After the survey of any part of the town has been completed, the Superintendent shall deposit all maps, field-books, proceedings, awards and all other documents connected with the survey of such part in the Municipal office of the Corporation of Calcutta.^[1]

All documents connected with the survey to be sent to the Municipal office.

Any person interested in the survey may, at any time within two months from the date of such deposit, which date shall be notified in the Calcutta Gazette, inspect such documents free of charge.

And, if during such period any objection to the survey be lodged with the Superintendent, such objection shall be decided by the Superintendent, or by such officer as the Local Government may appoint in this behalf.

21. After all objections lodged under the last preceding section have been decided, the Local Government shall, if it approves the survey, signify such approval by notification^[2] in the Calcutta Gazette.

Approval of the survey by the Local Government to be notified. No suit shall lie unless brought within one year. Local Government may make rules under the Act.

22. No suit shall lie to set aside any demarcation of boundaries made under the provisions of this Act unless brought within one year from the date of the notification mentioned in the last preceding section.

23. The Local Government may lay down rules not being inconsistent with this Act to provide for the preparation of maps and for the collection and record of any information in respect of any land to be surveyed under this Act, and generally for the proper performance of all things to be done and for the regulation of all proceedings to be taken under this Act.

24. Every notice in and by this Act required to be served on any person may be served—

How notices may be served.

- (a) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person usually resides or holds his office, or carries on his business, or by delivering the same to an agent or servant of such person, or to a male adult member of his family and by

[1] As to the application of this Act in Provincial Municipalities, see footnote [1] on p. 721, ante.

[2] For a list of notifications issued under s. 21, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 25-27.)

fixing a copy on some conspicuous part of the land or premises to which it relates; or

- (b) by sending a registered cover through the post office containing such notice directed to the said person at the place where he resides :

Provided that, after the publication of the notification referred to in section 21, no survey made under this Act shall be vitiated for any defect in the service of notice.

Penalty for failure to comply with requisition in notice.

25. Whoever fails to comply with a requisition contained in any notice duly served under section 5 or section 8 of this Act shall be liable to a fine not exceeding one hundred rupees.

Proceedings not to be affected by informality.

26. No proceedings under this Act shall be affected by reason of any informality, provided the directions of this Act be in substance and effect complied with; and no proceedings, under this Act shall be affected by reason of the omission to serve any notice on an owner whose name is not registered as owner in the Calcutta Collectorate^[1] or in the registers of the Corporation of the town of Calcutta.^[1]

Power of Local Government to extend this Act to the suburbs.

27. The Local Government may extend^[2] the whole or any of the provisions of this Act to the whole or any part of the suburbs of Calcutta which may hereafter be amalgamated for municipal purposes with the town of Calcutta.

^[1] As to the application of this Act in Provincial Municipalities, see footnote [1] on p. 721, *ante*.

^[2] For an order made under s. 27, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

BENGAL ACT 2 OF 1887.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1887.][¹]

(9th March, 1887.)

An Act to amend Bengal Act 5 of 1880.[²]

Ben. Act 5 of 1880. Whereas it is expedient to amend the Bengal Vaccination Act, Preamble. 1880; [²] It is enacted as follows:—

PRELIMINARY.

Ben. Act 5 of 1880. 1. This Act shall be read with, and taken as part of the Bengal Vaccination Act, 1880.[²]

Construction of Act.

(Commencement.) Rep. by the Repealing and Amending Act, 1897 (5 of 1897).

2. In this Act, unless there be something repugnant in the subject or context,—

Interpretation.

“vessel” includes anything made for the conveyance by water of “Vessel.” human beings or of property.

VACCINATION OF CHILDREN.

3. In section 3, immediately before the last paragraph, the following shall be inserted:—

Amendment of section 3.

[Printed *ante*, p. 318.]

[³][The Schedule hereto annexed shall be annexed as the First Schedule to the Bengal Vaccination Act, 1880.]

[¹] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1886, Part IV, page 11; and for Proceedings in Council, see *ibid*, Supplement, pages 141, 187, 493, 630 and 740.

LOCAL EXTENT.—Since this Act is (see s. 1) to be read with and taken as part of the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), it has the same local extent as the latter Act, as to which see footnote [⁴] on p. 315, *ante*.

The application of the Act is barred in—

the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

[²] Printed *ante*, p. 315.

[³] This paragraph was added by the Repealing and Amending Act, 1897 (5 of 1897), Sch. II—see Vol. I of this Code.

(Secs. 4-8.)

Amendment
of section 4.

4. For the first paragraph of section 4, the following shall be substituted:—

[Printed *ante*, p. 318.]

VACCINATION OF PERSONS ON BOARD VESSELS.

Amendment
of section 13.

5. To section 13 the following shall be added:—

[Printed *ante*, p. 320.]

New section
to follow
section 13.

6. After section 13 the following section shall be inserted:—

13A. [Printed *ante*, p. 321.]

MISCELLANEOUS.

Amendment
of
section 28.

7. To section 28, after clause (c), the following clause shall be added:—

[Printed *ante*, p. 325.]

New sections
to follow
section 29.

8. After section 29 the following sections shall be inserted:—

29A, 29B. [Printed *ante*, p. 326.]

THE FIRST SCHEDULE.

... [Printed *ante*, p. 327.]

BENGAL ACT 2 OF 1889.

(THE PRIVATE FISHERIES PROTECTION ACT, 1889.)^[1]

(26th June, 1889.)

An Act for the protection of the right of fishing in private waters.

Whereas it is expedient to provide for the protection of private rights of fishery; It is hereby enacted as follows:—

1. This Act may be called the Private Fisheries Protection Act, 1889. Short title.

2. In this Act— Interpretation-clause.
“fish” includes shell-fish and turtles; “Fish.”

“fixed engine” means any net, cage, trap or other contrivance for taking fish fixed in the soil or made stationary in any other way; “Fixed engine.”

“private waters” means waters—

(a) which are the exclusive property of any person; or

(b) in which any person has an exclusive right of fishery, and in which fish are not confined but have means of ingress or egress. “Private waters.”

3. Any person who—

- (a) fishes in any private waters, not having a right to fish therein,
(b) erects, places, maintains or uses any fixed engine in private waters, or puts, or knowingly permits to be put, therein any matter for the purpose of catching or destroying fish without the permission of the person to whom the right of fishery therein belongs;

Penalties.

[¹] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1889, Pt. IV, p. 6; for Report of Select Committee, see *ibid.*, p. 32; and for Proceedings in Council, see *ibid.*, Supplement, pp. 658, 714, 947 and 960.

LOCAL EXTENT.—Since this Act contains no local extent clause, it must be taken to extend to the whole of the former Province of Bengal.

The application of the Act is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

It has been declared to be in force in the Sonthal Parganas, see Vol. IV, Pt. VI.

OTHER ENACTMENTS.—The Indian Fisheries Act, 1897 (4 of 1897), is to be read as supplemental to this Act—see s. 2 of the former Act, in General Acts, 1887-97, Ed. 1909, p. 545.

As to fishing in forest, see the Indian Forest Act, 1878 (7 of 1878), ss. 25 (i), 31 (7), in General Acts, 1868-78, Ed. 1909, pp. 585, 589.

As to fishing-stakes in fairways leading to ports, see the Obstructions in Fairways Act, 1881 (16 of 1881), in General Acts, 1879-86, Ed. 1909, p. 131.

For power to make rules prohibiting or regulating fishing in public parks, see the Bengal Public Parks Act, 1904 (Ben. Act 2 of 1904), s. 4 (f), in Vol. III of this Code.

(Secs. 4-6.)

shall be guilty of an offence, and shall be punished for a first offence with a fine not exceeding fifty rupees;

and for a subsequent offence with imprisonment which may be simple or rigorous, for a term not exceeding one month, or with a fine not exceeding two hundred rupees, or both :

Provided that nothing herein contained shall apply to acts done by any person in the exercise of a *bonâ fide* claim of right, or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

Forfeiture of
fixed engine.

4. (1) Any fixed engine erected, placed, maintained or used in contravention of the last preceding section, and any fish taken by means of such engine, or otherwise in contravention of this Act, shall be forfeited.

Removal of
fixed engine.

(2) And such fixed engine may be removed or taken possession of by the Magistrate of the district, or such person as he empowers in this behalf.

Entry upon
the land of
another or
upon private
waters with
intent to
commit an
offence.

5. Whoever enters upon land in the possession of another or upon private waters, with intent to commit any of the offences specified in section 3, shall be punished with a fine not exceeding fifty rupees.

Offences un-
der this Act
considered
"cognizable
offences."

6. Offences committed under this Act shall be considered to be cognizable offences " as defined in the Code of Criminal Procedure. [1]

10 of 1882.

[1] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to the latter Act—see s. 3 (1) thereof, in General Acts, 1898-1903, Ed. 1909, p. 40.

BENGAL ACT 2 OF 1890.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1890.][.]

(12th March, 1890.)

Ben. Act 5
of 1880.

An Act to amend the Bengal Vaccination Act, 1880.[²]

Whereas it is expedient to amend the Bengal Vaccination Act, Preamble. 1880; [²] It is hereby enacted as follows:—

1. (*Commencement.*) *Rep. by the Amending Act, 1903 (1 of 1903).*

2. In the preamble of the Bengal Vaccination Act, 1880, [²] for the words “the Town, Port and Suburbs [³][of Calcutta]” the words “the Town of Calcutta and the Port of Calcutta” shall be substituted. Amendment of preamble of Ben. Act. 5, 1880.

3. In section 1 of the same Act, for the words “the Town, Port and Suburbs [³][of Calcutta]” the words “the Town of Calcutta and the Port of Calcutta” shall be substituted. Amendment of section 1, Ben. Act 5 of 1880.

4. (1) In section 2 of the same Act, for the definition of “Town of Calcutta” the definition “‘Town of Calcutta’ means Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888,” [⁴] shall be substituted. Amendment of definition of “Town of Calcutta.”

Ben. Act 2
of 1888.

(2) In the same section, add the following to the definition of “Port of Calcutta”:— Addition to definition of “Port of Calcutta.”

“or any other law for the time being in force.”

(3) (*Repeal of definition of “Suburbs of Calcutta.”*) *Rep. by the Amending Act, 1903 (1 of 1903).*

[¹] **SHORT TITLE.**—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1890, Pt. IV, p. 2; and for Proceedings in Council, see *ibid.*, Supplement, pp. 2, 44, 172 and 200.

LOCAL EXTENT.—Since this Act merely amends the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), it has the same local extent as the latter Act, as to which see footnote [¹] on p. 315, *ante*.

The application of the Act is barred in—

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

[²] Printed *ante*, p. 315.

[³] The words “of Calcutta” in square brackets in ss. 2 and 3 were inserted by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[⁴] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to s. 3 (7) of the latter Act in Vol. III of this Code—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

(Sec. 5.)

Rules and orders in force before passing of Act to be in force in Calcutta as defined by Ben. Act 2, 1888.

5. (1) All rules made and orders issued under section 33^[1] of the Bengal Vaccination Act, 1880, relating to the Town of Calcutta in force immediately before the passing of this Act, shall be deemed to be in force in Calcutta as defined by the Calcutta Municipal Consolidation Act, 1888.^[2] Ben. Act 5 of 1880.

(2) The Local Government may, from time to time, modify or cancel such rules and orders. Ben. Act 2 of 1888.

(3) And all such rules and orders relating to the Suburbs of Calcutta are hereby repealed.

^[1] Printed *ante*, p. 315.

^[2] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), and this reference should now be construed as a reference to s. 3 (?) of the latter Act in Vol. III of this Code—see the Bengal General Clauses Act, 1899 (Ben. Act 1 of 1899), s. 10, in Vol. III of this Code.

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